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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895

163-706 No.

IN THE MATTER OF THE PETITION OF OLAF J. SVENSSON, CLAIMANT OF THE STEAMSHIP CERES, AND OF SYDSVENSKA ANGFARTYGS AKTIEBOLAGET, FOR A WRIT OF CERTIORARI IN THE SUIT

of

THE STEAMSHIP CERES, OLAF J. SVENSSON, CLAIMANT, AND THE SYDSVENSKA ANGFARTYGS AKTIEBOLAGET

Appellants

vs.

GERHARD WESSELS AND OTHERS

Libelants-Appellees

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT OF PETITION

CONVERS & KIRLIN
Proctors for Petitioners

J. PARKER KIRLIN
FREDERICK GREEN
Of Counsel

Supreme Court of the United States.

October Term, 1895.

The Steamship "CERES," OLAF J. SVENSSON, Claimant, and SYDSVENSKA ANGFARTYGS AKTIEBOLAGET,
Appellants,

vs.

GERHARD WESSELS and others,
Libelants-Appellees.

In the Matter of the Petition of Olaf J. Svensson and Sydsvenska Angfartygs Aktiebolaget for a writ of certiorari.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Olaf J. Svensson, claimant of the steamship *Ceres*, in the suit of Gerhard Wessels and others against the said steamship, respectfully shows unto the Court as follows:

FIRST.—On August 2, 1892, Gerhard Wessels and others filed their libel against the steamship *Ceres*, whereof your petitioner Olaf J. Svensson was master and against your petitioner Sysdvenska Anfartygs Aktiebolaget, as the owner thereof, in the District Court of the United States, for the Southern District of New York, for claims, arising under a time charter of the said steamer to the libelants, amounting to $8,315 (fols. 17, 18).

On August 16, 1892, your petitioner, Olaf J. Svensson, duly appeared and filed a claim to the said steamship and a stipulation for value in the sum of $8,750, and your petitioner, Sydsvenska Angfartygs Aktiebolaget, having also duly appeared, the answer of your said petitioners was filed on September 19, 1892.

SECOND.—On November 15, 1893, and upon several days thereafter, the cause came on to be tried before the Honorable ADDISON BROWN, District Judge, upon the evidence adduced by the respective parties, and on April 7, 1894, the District Judge filed a decision in writing (Record, p. 384), in favor of the libelants. An interlocutory decree and order of reference to a Commissioner were entered on May 21, 1894, and on October 26, 1894, a final decree was entered for the sum of $6,149.29, with interest thereon from August 2, 1892, being $824, together with $346.75, costs, in all the sum of $7,320.04 (fol. 1934).

Of the said principal sum of $6,149.29 the sum of $161.95 was allowed as the value of coal left on board the steamship at the end of the charter (fol. 1912), which, by agreement, the owners were to pay for (fol. 1192).

The remainder was awarded as damages arising from a breach of an undertaking contained in the charter-party and reading as follows:

"The owners guarantee the steamer to make an average speed under steam of not less than (11) eleven knots per hour, fruit or light laden in moderate weather and with good American coal" (fol. 1214).

Of the damages awarded for breach of this undertaking, $170 was allowed for loss of time in the use of the steamer (fol. 1911), and the rest, or $5,817.34, was awarded for deterioration of certain bananas, parts of two cargoes brought by the *Ceres* from Colon to New York, which deterioration was found to be due in part to the fact that the steamer failed to average 11 knots while on the way to Colon to load the bananas, and in part because she failed to make an average speed of 11 knots from Colon to New York.

THIRD.—Afterwards your petitioners appealed from the aforesaid decree to the United States Circuit Court of Appeals for the Second Circuit, and assigned for error, among other matters, that an improper measure of damage had been adopted; that the damages awarded for injury to fruit were remote, and were not within the contemplation of the parties as a result of a breach of the guaranty of speed, and also that the libelants before the voyages in question knew that the steamer probably would not make the guaranteed speed, and in shipping the bananas took the risk of injury resulting therefrom (fols. 1919–23, 1955–58).

The appeal was argued and heard, and thereafter an opinion of the majority of the Court (LACOMBE and SHIPMAN, JJ.) was filed, affirming, without interest or costs, the decree of the District Court, with the exception that the costs of the District Court were disallowed, and on the 27th day of April, 1896, an order was entered in the said Circuit Court of Appeals for a mandate directing the said District Court to proceed in conformity with the opinion. Judge WALLACE, Senior Circuit Judge, dissented from the decision, on the grounds that fruit damages were remote, speculative, and caused by the improvident conduct of the charterers (p. 503).

FOURTH.—The following facts, which are believed to be pertinent to your petitioners' claim that the award of fruit damages was incorrect, appeared upon the trial or at the reference to ascertain damages.

The charter party in question (pp. 297–304) was a charter of demise by which the libelants hired the *Ceres* at £650 per month for a term of four calendar months from the delivery of the ship at Livingston, Guatemala (fol. 1187), with the option of continuing the charter for a further period of twelve calendar months on giving notice thirty days before the expiration of the four months' term (fol. 1201). The charter-party contained the guaranty clause above quoted, and further provided as follows:

"The steamer * * * is to be employed in carrying lawful merchandise, including petroleum or its products,

in cases, (and passengers so far as accommodations will allow, * * *); between port and ports in Canada and/or other British possessions not north of River St. Lawrence (steamer to leave the St. Lawrence by the 31st of October), and/or the United States of America and/or West Indies and Gulf of Mexico, and/or Carribean Sea, and/or Central America, and/or South America, not south of the River Plate, as the Charterers or their agents shall direct (fols. 1188–1190) * * * the captain, although appointed by the owners, shall be under the orders and direction of the Charterers as regards employment, agency or other arrangements (fols. 1197–8). * * * Charterers have right to sublet this vessel or assign this Charter to responsible parties" (fol. 1212).

The charterers, who described themselves on their letterheads as importers of tropical fruits and general commission merchants (fols. 1456, 1464, 1468), had been many years in business at New York and were among the pioneers in the banana business (fol. 241). At the time the charter was made, they imported bananas from the West Indies and from Central America only, from neither of which places is a speed of 11 knots necessary for sound delivery (fols. 1715, 1721). Before they chartered the *Ceres*, they were using four steamers, only one of which had a speed of 11 knots, the speed of the others being described as "about 11 knots" and as 10 knots (fols. 1716–1717). They had brought no bananas from Colon for six years (fols. 1714, 1717). The only concern which did import bananas from Colon was the Aspinwall Fruit Company (fol. 1827), which ran a regular line of 13 knot steamers (fols. 1663–4, 1690).

The charter was signed in behalf of your petitioner, the respondent and owner, by one Wigg, a ship-broker, acting under authority from Beijer & Company, the managers of the steamer (fols. 1214, 1261–3). And it is confidently asserted that it nowhere appears that the owner, a Swedish corporation, the managers, who resided in Sweden, or their agent Wigg, had knowledge or experience of the banana trade or knew that a speed of 11 knots was ever essential in it, if such be the fact, or knew, except so far as appeared by the language of the charter, that the charterers intended to use the vessel to carry

bananas. The charterers themselves seemed not to have entertained the thought of bringing bananas from Colon until they had been using the *Ceres* for six months (fols. 1341-2). It is believed that the statement made by the learned District Judge (fol. 1928) and repeated in the opinion of the majority of the Appellate Court (fol. 1992) to the effect that the agent who made the charter was acquainted with the necessity of speed in the banana trade arises from the mistaken supposition that the charter was signed by Hall, who was acquainted with that trade (fols. 991-2), but was not appointed agent for the *Ceres* until the end of the charter was approaching and the two voyages in question had been made (fols. 1412-13).

The *Ceres* began to run under the charter-party in July, 1891. The charter, having been continued by due notice for a further twelve months after the four months' period expired, lasted until May, 1892, when it was canceled, on the ground that the steamer could not perform the guaranty of speed (fol. 1415). While it was current, the *Ceres* was under sub-charter from December to March and under one of the sub-charters was employed in carrying timber and coal (fols. 1497-8). While in the service of the libelants *she had carried general cargoes* on her outward voyages (fols. 325, 329), and on the only inward voyages as to which her cargo is shown, namely, those known as voyages 8 and 9, *she carried besides bananas a large quantity of general cargo consisting of ivorynuts, coffee, rubber, hides and other goods* (fols. 839, 840) upon which they earned a large freight.

It was for injury to bananas brought from Colon upon these voyages numbered 8 and 9, the vessel's only voyages from that port, that the damages for injury to fruit were awarded. The amount of such damages was ascertained by subtracting the amount realized on the sale of the bananas at New York from the amount which it was estimated would have been realized except for the alleged failure in speed, and by deducting 25 per cent. from the amount thus fixed, because the estimates of the amount the fruit would have brought had there been no delay, and of the actual loss of running time were believed to be excessive (fols. 1903–8, 1929–30).

It appeared that on each voyage the bananas were ordered on the vessel's arrival at Colon from New York, that she then left Colon for other ports, where she loaded cargo and from which she returned to Colon for the bananas. It was found that the vessel failed to make the guaranteed speed between leaving Colon and returning to it. The only evidence upon this subject consists in the calculations of the libelant's witness Mowbray, which he stated showed a loss of 5 hours upon voyage 8 and of 7½ hours upon voyage 9 (fols. 1577-9, 1598-9).

On voyage 8 the *Ceres* left Colon on the afternoon of Monday, April 4th, called at Bocas del Toro on April 5th, at Greytown on April 6th, and arrived again at Colon after nightfall upon April 8th, a voyage of over 4 days (Ex. 69, fol. 1461). On voyage 9 she left Colon in the morning of May 3d, called at Greytown and returned to Colon after nightfall on May 5th, a voyage of over three days (Ex. 70, fol. 1465). What Mowbray did was to get the latitudes and longitudes of these ports and calculate the distance between them by Bowditch's Navigation Tables (fols. 1625-26), which would give the distances between the ports in straight lines. He did not know the course the vessel actually took (fols. 1626-27). He made no allowance for deviation from the straight course or slackening of speed in entering or leaving harbors (fols. 1628-29), nor for time that was lost in waiting for a pilot at Bocas (fols. 1629, 1660). It is obvious that the allowances which should be made for actual navigation might easily amount to as much as the 5 and 7½ hours he estimated had been lost, because the vessel would not go, as he measured, in straight lines on a chart.

He further testified that by the delay of 5 hours on voyage 8. the vessel got back after nightfall, instead of in the afternoon, and could not proceed to her berth until the next morning, which further delayed the loading by 7 hours, and that, therefore, Sunday intervened before it was finished, causing still another delay of 24 hours (fols. 1578-82) in the delivery of the fruit at New York.

Upon voyage 9, it was testified, the loss of 7½ hours in returning to Colon, compelled the vessel to remain outside the harbor over night, which further delayed her

loading by 15½ hours (fols. 1600–1). Although the uncertainty of the proof as to the loss of running time, between leaving Colon and returning to it, was one of the several grounds upon which the deduction of 25 per cent. was made from the damages claimed (fol. 1905), no deduction whatever was made for the rest of the delay in completing the loading, which was alleged to result therefrom. For the consequences of this delay in beginning the voyage, amounting in all to 36 hours on voyage 8, and to 23 hours on voyage 9, the vessel was held responsible in the District Court and in the Circuit Court of Appeals (fols. 1899–1902, 1930).

The loss of time from Colon to Quarantine is placed, by those witnesses who place it highest, at 23½ hours upon voyage 8 (fol. 1584), and at about 26 hours upon voyage 9 (fols. 1599, 1604–5).

On voyage 8 the fruit began to give off an odor indicative of decay (fols. 1643, 1646, 1647, 1651) at about noon on Monday (fol. 1588), nearly 48 hours before the vessel began to unload, and nearly, if not, quite 60 hours before her unloading was or could have been finished (fols. 1585–1758).

Upon voyage 9 signs of decay were apparent on Sunday, the 15th, at noon, and the cargo ripened rapidly after that time (fol. 1606), while the vessel did not begin to discharge until Monday, May 16, at noon, and did not complete her discharge until the afternoon of the next day.

The time that elapsed between the hour when the fruit began to decay and the hour of its delivery being greater than the total delay alleged, the fruit was decaying through a time greater than the time of the delay, and since the detention before the vessel left Colon was greater than that which occurred on the voyage to New York, it would seem that the larger part of the damages was ascribable to it, and that, consequently, the vessel has been held to the extent of several thousand dollars because of delay which occurred before the fruit was shipped.

In the opinion of your petitioners it was proved upon the trial that the libelants knew before they sent the

vessel either upon voyage 8 or upon voyage 9 that there was no reasonable probability that she could or would fulfill the guaranty of speed under the conditions of draft and trim imposed. Your petitioners believe that the following extracts from the dissenting opinion of Judge Wallace in the Circuit Court of Appeals are fully established by the evidence.

"After December, 1891, however, at which time some repairs were made to the vessel, nothing was done or attempted by her owners to increase her speed, and they insisted that they had done all they could, and that the charterers had waived performance. Long before the voyages in question the charterers understood that the vessel was unable, and was likely to continue unable, to make a higher speed than she actually made upon the two voyages in question."

The learned Judge then quotes from a letter from the charterers to the owners, dated February 5, 1892, and continues:

"There is no pretense that from the time that letter was sent the libelants were under any expectation that the owners would endeavor to increase the speed of the vessel" (fols. 2006-8).

The libelants had repeatedly written to the owners that the vessel did not and could not make 11 knots an hour (fols. 1251, 1258, 1271-2, 1275-6, 1286, 1297, 1393). *They never testified that they expected her to do it on the voyages in question.*

Before the first of those voyages they sent the captain a letter of instructions, to which was appended the following schedule for the trip:

"SCHEDULE.

Lve.	N. Y., Saty., Mch. 26.		
Arr.	Colon, Monday,	Apl. 4th	a. m.
"	Bocas, Tuesday,	" 5th	"
"	Greytown, Wedy.,	" 6th	"
"	Bocas, Thurs.,	" 7th	"
Lve.	Bocas, Friday,	" 8th	p. m.
Arr.	Colon. Saty.,	" 9th	a. m.
Lve.	" "	" 9th	night.
Arr.	N. Y., Mond.,	" 18th	a. m." (fol. 1404).

The vessel actually made better time on every run throughout the voyage than was appointed in the schedule (Ex. 69, p. 366). Immediately after the conclusion of this voyage, the vessel was sent to the same ports, upon the other voyage for which damages have been awarded.

It is a fair inference from the above schedule that the libelants themselves did not know that a speed of 11 knots was essential to the safety of fruit from Colon until after they made the experiment. They knew it was not essential from any other fruit port mentioned in the charter, and they do not testify that they knew when the charter was signed that it was essential from Colon. It does not appear that the owners knew it. How, then, could such damages be reasonably contemplated as the probable consequences of a breach of the speed guaranty?

FOURTH.—Thereupon your petitioners pray that a writ of *certiorari* may issue from this Court to the said Circuit Court of Appeals requiring the whole record in this case to be certified to this Court for its consideration for the following reasons:

(1.) Because the damages at most should have been limited to the proved difference in value during the period of the charter prior to its cancellation between a vessel such as the contract called for and such as the charterers received.

(2.) Because the fruit damages awarded are speculative and remote.

(3.) Because a large, if not the larger, part of the damages awarded was for injury to bananas not on board the steamship at the time of the alleged failure to make the guaranteed speed, and such damages are remote.

(4.) Because as to such part of the damages there is no adequate proof of failure to make the guaranteed speed or that the damages awarded for such alleged failure happened in consequence of it.

(5.) Because before each of the two voyages on which fruit was damaged, and especially before the latter voy-

age, the libelants knew that there was no reasonable probability that the vessel would or could make the guaranteed speed, and the damages awarded are the result of their negligent and reckless act in shipping the fruit with knowledge that the resulting injury would probably occur.

Your petitioners present herewith a certified copy of the transcript of record returned from the District Court to the United States Circuit Court of Appeals and of the record in the last named court both in this action and also in a cross action by Sydsvenska Angfartygs Aktiebolaget against Gerhard Wessels and Charles T. Wessels, in which latter case an order has been entered in the said Circuit Court of Appeals for a mandate directing the District Court to enter a decree in favor of your petitioner Sydsvenska Angfartygs Aktiebolaget against the respondents, the libelants herein, for $1,382 and interest (fols. 2021-22) for unpaid charter hire, the two cases having been tried together in both courts.

Wherefore, your petitioners pray that this Honorable Court will cause a writ of *certiorari* to be issued, pursuant to the power vested in this Court by an act of Congress entitled "An Act to establish Circuit Courts of Appeals and to define and regulate, in certain cases, the jurisdiction of the courts of the United States and for other purposes," approved March 3, 1891, requiring the said United States Circuit Court of Appeals for the Second Circuit to certify the whole record and cause in this case to this Court for consideration, and that thereupon this Court will decide the whole matter in controversy in the same manner as if the cause had been brought to this Court for review by appeal, and your petitioners will ever pray, &c.

OLAF J. SVENSSON.
SYDSVENSKA ANGFARTYGS AKTIEBOLAGET.
By CONVERS & KIRLIN,
Their Proctors.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

J. PARKER KIRLIN, being duly sworn, says: I am one of the proctors for the petitioners herein. The foregoing petition is true to the best of my knowledge, information and belief. The reason why this petition is not verified by one of the petitioners is that the petitioner Sydsvenska Angfartygs Aktiebolaget is a Swedish corporation, and that, as your deponent is informed and believes, neither any of its officers nor the petitioner Olaf J. Svensson is within the United States. This petition is made and presented by the authority of each of the petitioners. I firmly believe that the decision of the United States Circuit Court of Appeals in this case is erroneous in the particulars before mentioned. The foregoing application for a writ of *certiorari* is meritorious and not made for the purpose of delay, and, in my opinion, the case is a proper one for the extraordinary relief authorized by the statute.

J. PARKER KIRLIN.

Sworn to before me this }
2d day of May, 1896. }

J. B. WALLACE,
Notary Public,
New York County.

[SEAL.]

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

POINTS.

I.

The damages awarded for breach of the guaranty of speed consisting in deterioration in the market value of bananas, are not within the liability intended to be assumed, are speculative and are remote.

The guaranty reads: "The owners guarantee the steamer to make an average speed under steam of not less than (11) eleven knots per hour, fruit or light laden, in moderate weather and with good American coal."

It has always been, and still is insisted by the owner, that this is a guaranty of speed capacity merely. If so, the measure of damages would admittedly be the difference between the value of the use for the chartered term of the vessel as it is and the value of its use, if it were as warranted, or the increased cost of substituting a better boat. In the view of a majority of the Court, however, the thing guaranteed is a result, namely, that the vessel will actually maintain the designated average speed whenever the conditions of lading, weather and coal are fulfilled. Assuming this construction to be correct, the damages awarded are nevertheless remote. The ordinary and immediate consequences to the charterers of a breach of the guaranty would be a loss of time in the use of the ship. It is the use of the ship for which they pay a monthly sum, and, if her speed falls off, she must make fewer voyages and carry fewer cargoes. She must be longer at sea, and burn more coal. The charterers would, perhaps, be entitled to cancel the charter-party, and charge the owners with the extra expense of a substituted vessel. These are the consequences against which the owners would seem, from a reading of the charter-party, to have intended by the clause of guaranty to indemnify the charterers.

The Court, however, went beyond the charter-party and looked to the supposed situation and knowledge of those who signed it, not for the purpose of ascertaining the meaning of the undertaking, which, in its opinion, was clear, but in order to find out what the parties expected might happen if it was broken.

It found, in substance, that the owner through its agent knew that the vessel was wanted for the particular purpose of carrying fruit, and that the warranty was given with respect to the fitness of the vessel for that purpose, "so that damage to a perishable cargo which directly occurred from a failure to make the requisite speed must have naturally been in the minds and contemplation of the owner's agent when the contract was executed" (fol. 1992).

If the situation of the parties is material, it is believed that the Court has misread their situation. The scope of the charter, the needs of the charterers' business and the actual use made of the vessel are detailed in the preceding petition. When the charter was signed, the charterers were importing bananas only from Central America and the West Indies, in ten-knot boats, which were suitable for their business; and so long as they confined themselves to running the *Ceres* in that trade, as they did for six voyages, no damage to bananas occurred. It was only when the charterers, six months after the charter was made, extended their business and for the first time in six years began to import bananas from Colon, in competition with a line of thirteen-knot boats (1690–92), that injury happened to the fruit. And on each of the successive voyages from Colon, the Court found that about 25 per cent. of the damage would have happened even if the ship had made eleven knots all the time. So that a speed of eleven knots was not necessary to fit the *Ceres* for bringing bananas from Central America or the West Indies, nor sufficient to fit her for the banana trade with the next more distant ports. Moreover, neither the owner, a Swedish corporation, nor its managers, who resided in Sweden, are shown to have had any acquaintance with the needs of the trade. Presumably they had none. The finding of the Court that their agent must naturally

have contemplated damage to fruit from failure in speed doubtless proceeded from a supposition that the agent who signed the charter-party was the witness Hall, who was acquainted with the trade. Hall was not appointed agent until near the end of the charter. The charter was signed for the owner by Wigg, as to whose acquaintance with the fruit trade or with the situation or desires of the charterers nothing appears.

Damage to bananas, it is submitted, was not a consequence naturally to be anticipated from a failure to make an average of 11 knots during such time as the conditions of the guaranty might be fulfilled.

It is further conceived that the Court should not have gone outside the charter-party to determine the extent of liability under an undertaking whose terms were clear. Even if the owners had imagined that damage might happen to fruit from failure in speed, that would not make them liable for such damage, if, by the terms of their contract, they had not undertaken responsibility for it. They were at liberty, if they saw fit, to give a guaranty of speed which should provide the charterers with indemnity against loss of time and excessive consumption of coal in the use of the vessel, without at the same time insuring their fruit against decay, and it seems to the owners that they have done so. Whether they have done so or not, depends upon the meaning of the written clause. Its sense is clear, and the legal liability it imports is a question of law. It cannot, whatever the circumstances of its making, be construed as *expressing the meaning that there shall be no damage to fruit* by lack of speed.

Since the question is, what liability results from the language used, it is immaterial what the parties thought might happen in case the undertaking were not performed. Cases in point may be found among those where a contract has been made to complete a building or machine by a particular day. In such a case it is often known to the parties that much damage will result if the thing to be built is not ready for use at the stipulated time, but such damage, though anticipated, is not recoverable, because responsibility for it was not assumed.

In the case of *Howard* v. *Stillwell Mfg. Co.*, 139 U. S.,

199, the plaintiff contracted to put into defendant's flour mill certain specified machinery and "all other machinery and material necessary to erect and complete a flour mill *of 200 barrels capacity in 24 hours*," agreeing "to have the mill completed and ready to run on or before July 15," and guaranteeing "that said mill when completed shall have a capacity for from 200 or more barrels of flour in 24 hours." In an action for the price of the machinery, the plaintiff alleged damage from plaintiff's failure to provide the machinery within the specified time, and offered to prove the market price of flour at that place during and after the time of the delay and what the cost to it of making flour would have been, claiming to recover the difference as the lost profit on each of 200 barrels for every day of the delay. It was *held*, that the evidence of the price and cost of flour was properly excluded. Mr. Justice LAMAR cited with approval *Hadley* v. *Baxendale*, 9 Exch., 341; *Pennypacker* v. *Jones*, 106 Pa. St., 237, and *Blanchard* v. *Ely*, 21 Wend., 342, and said (at page 206):

"The grounds upon which the general rule of excluding profits, in estimating damages, rests, are (1) that in the greater number of cases such expected profits are too dependent upon numerous uncertain and changing contingencies to constitute a definite and trustworthy measure of actual damages; (2) because such loss of profits is ordinarily remote, and not, as a matter of course, the direct and immediate result of the nonfulfillment of the concract; (3) and *because most frequently the engagement to pay such loss of profits, in case of default in the performance, is not a part of the contract itself, nor can it be implied from its nature and terms.*"

On page 210 he said, in speaking of the damages claimed in the case at bar:

"Such losses were, in our opinion, rather remote and speculative than direct and immediate, resulting from the breach alleged. *There was no stipulation in the contract that the defendants should make profits on flour from the wheat ground up by the machinery which the plaintiff contracted to furnish and erect in the mill. Nor were there any special circumstances attending the transaction from*

which an understanding between the parties could be inferred that the plaintiff was to make good any loss of profits incurred by a delay in furnishing and putting up such machinery according to the terms of the contract."

In *Pennypacker* v. *Jones*, 106 Pa. St., 237, the defendants by written agreement undertook to place in plaintiff's mill, "five of our reduction machines for wheat * * * which * * * we undertake will produce the result stated below. * * * Your mills have a capacity not below 200 barrels daily. * * * Again further, we agree to ship our machines within ten days from date we receive your order, and not to stop your mills exceeding six days from time we commence work."

The machinery proved unable to turn out 200 barrels a day. It was *held* that the plaintiffs could recover as damages the cost of remedying the defects of the machines but that they could not recover the loss of profits, to wit: $12,411, which the Referee found they would have realized during the time the mill was closed for repairs.

GREEN, *J*, said:

"Profits may be recovered where they are part and parcel of the contract itself, entering into and constituting a portion of its very elements; something stipulated for, the right to the enjoyment of which is just as clear and plain as to the enjoyment of any other stipulation. *It was no part of the contract that the plaintiff should make profits, or even have the opportunity of doing so, by carrying on a business with the machinery which the defendants agreed to erect.* It is not like the sale of chattels or of land, where the difference between the contract value and the actual or market value of the property sold represents directly and immediately the measure of the party's loss or gain in the transaction. There the possible profit is the very object of the contract, and is necessarily in the contemplation of the parties. But when a machinist furnishes machinery to a mill owner, it is no part of his engagement that a profitable business shall be carried on with the machinery furnished."

Where the courts have looked beyond the contract itself to determine damages for breach of warranty, it has

usually been for the purpose of ascribing an especial and particular signification or bearing to the words of the warranty. So in *Beeman* v. *Banta*, 118 N. Y., 538, the plaintiff recovered the value of chickens spoiled because of the insufficiency of a freezer built for him by the defendant, because the agreement under which it was built was held to amount to a warranty that the chickens would keep long enough for the May market—an insurance against deterioration in the chickens before that time.

In the case of the *Ceres*, the meaning is plain and the warranty is general, covering the use of the vessel, for 18 months, from the St. Lawrence to the River Plate, with liberty to carry passengers and lawful merchandise. If the owner is to be held liable upon the ground that damage to "perishable cargo" was anticipated as likely to happen, it is hard to see why its liability should be restricted to damage to a particular kind of perishable cargo. If liable for bananas, it should be liable for the spoiling of other fruit. It should equally be liable for the wasting of cattle due to prolongation of the voyage. The charter party expressly provided for the carriage of passengers. Would the owners have been liable for the cost of extra food supplied to them?

The guaranty is not to be construed as an undertaking by the owner that fruit will not spoil by delay. The risk of injury to bananas at sea, is naturally to be regarded as incident to the charterers' business of importing fruit and not to the owner's business of letting its ship for other's use. It would have been unreasonable for the owner to have assumed it. It got no adequate return. The charter hire was not paid by way of a premium for insuring fruit. Yet it has been held in fact to have given a warranty which amounted to an insurance.

In *Herring* v. *Skaggs*, 62 Ala., 180, an action for breach of warranty, the Court sustained a demurrer to a complaint in which the plaintiff alleged, as damages, the value of articles stolen from a safe warranted to be made of particularly tough iron, which "would withstand any attempt by a burglar, armed with approved implements of his trade, to enter it for 24 hours, and of two burglars, similarly armed, for the space of 12 hours."

STONE, *J.*, in delivering the opinion of the Court (p. 191), said:

"In the present case, if there was no fraud or bad faith in the sale, the proper measure of damages is the difference between the value of the safe as it was, and what it would have been worth if it had been as represented. This alone is the natural and proximate consequence of the breach; this alone can reasonably be presumed to have been within the contemplation of the contracting parties. To go beyond this, would be to give to a contract of warranty all the attributes of a contract of insurance. The two contracts are very different in their scope and obligations, and contemplate very different consequences from their breach."

In that case, the warrantor understood that the safe, in the language of the majority of the Circuit Court of Appeals (fol. 1992), "was wanted for a particular use, and the warranty * * * had reference to the adaptness or fitness * * * for that use." It was "entered into in view of the necessities" of its intended use, and the loss of articles from the safe "must have naturally been in the mind and contemplation" of the warrantor, for it was the very thing which the buyer was assured would not happen. Yet the seller was held not liable because he had not intended to take responsibility upon himself beyond the subject matter of the thing to which his guaranty related and the value of its use to the purchaser.

The guaranty of the *Ceres*' speed relates to the length of her voyages as regards the effect of their length upon the charterers' use of the vessel. The owner's responsibility under it was not intended to and should not extend to incidental consequences to other things than the vessel, which occur only because the vessel was used in a particular way.

POTHIER, quoted by COWEN, *J.*, in *Blanchard* v. *Ely*, 21 Wend., 342, at p. 348, said:

"In general, the parties are deemed to have contemplated only the damages and injury which the creditor might suffer from the non-performance of the obligations

in respect to the *particular thing* which is the object of it, and not such as may have been accidentally occasioned thereby in respect to his own (other) affairs."

In *Griffin* v. *Colver*, 16 N. Y., 489, the plaintiff contracted to build an engine and to deliver it to the defendants on a day certain, knowing that the defendants intended to use it to drive machinery for sawing lumber. He delivered it a week late. In an action for the price of the engine the defendants attempted to recoup as damages $50 per day, the profits they could have made in the week by the use of the engine, being the difference between the prices they would have received for sawing lumber and the cost and wear and tear of running the machinery. The Referee allowed instead a sum of $50 as the fair value of the use of the machinery and engine for a week. His ruling was sustained.

SELDEN, *J.*, after comparing the case with *Blanchard* v. *Ely*, 21 Wend., 342, where it was held that damages for failure to build and complete a steamboat by a specified day could not include loss of profits on her lost trips, said (p. 146):

"The rent of a mill or other similar property, the price which should be paid for the charter of a steamboat or the use of machinery, &c., &c., are not only susceptible of more exact and definite proof, but in a majority of cases would, I think, be found to be a more accurate measure of the damages actually sustained in the class of cases referred to, considering the contingencies and hazards attending the prosecution of most kinds of business than any estimate of anticipated profits, just as the ordinary rate of interest is upon the whole a more accurate measure of the damages sustained in consequence of the non-payment of a debt than any speculative profit which the creditor might expect to realize from the use of the money."

In *Baldwin* v. *U. S. Telegraph Co.*, 45 N. Y., 744, a telegraph company was sued for misdirecting and consequently delaying for several days the delivery of a telegram reading: "Telegraph me at Rochester what that well is doing." The purpose of the dispatch, which was communicated to an operator of a connecting line, was to find

out whether it would be advisable to accept an offer of $3,800 for an oil well. Shortly after the offer had been accepted an answer was received that the well could be sold for $5,000. A verdict was directed for $1,200. The Court of Appeals held that damages should be limited to the cost of sending the message.

ALLEN, *J.*, said at p. 750:

"Whenever special or extraordinary damages, such as would not naturally or ordinarily follow a breach, have been awarded for the non-performance of contracts, whether for the sale or carriage of goods, or for the delivery of messages by telegraph, it has been for the reason that the contracts have been made with reference to peculiar circumstances known to both, and the particular loss has been in the contemplation of both at the time of making the contract, as a contingency that might follow the non-performance. In other words, the damages given by way of indemnity have been the natural and necessary consequences of the breach of contract, in the minds of the parties, *interpreting the contract* in the light of the circumstances under which, and the knowledge of the parties of the purposes for which, it was made, and when a special purpose is intended by one party, but is not known to the other, such special purpose will not be taken into account in the assesment of damages for the breach. The damages in such cases will be limited to those resulting from the ordinary and obvious purpose of the contract."

In an action for breach of warranty collateral to a contract for the sale of a machine there can be no recovery for losses arising in the use of the machine caused by a latent defect, although the buyer wanted a good machine and got a warranted one precisely in order to guard against such losses, because, though they are the anticipated and may even be the inevitable consequences of a breach, they are not consequences which the seller means to assume responsibility for.

Frohreich v. *Gammon*, 28 Minn., 476.
Sanborne v. *Herring*, 6 Am. Law. Reg., N. S., 457, and note.
Wood v. *Carlton*, 6 N. Y., 865.
Case v. *Stevens*, 137 Mass., 551.
Sprout v. *Newton*, 48 Hun, 209.

The libelants' claim, to be legitimate, should have been limited to the difference between the sum they were paying for the *Ceres* and what it would have cost them, upon a cancellation of her charter, to obtain a substituted vessel that could have made the guaranteed speed.

II.

No damages should have been awarded for the alleged delay before the steamer left Colon.

(*a.*) *Such part of the damage to bananas as happened because the Ceres failed to make an average speed of eleven knots when on the way to Colon to load, and as would have happened even if she had performed the guaranty continuously thereafter, is upon any theory remote.*

Neither the owner nor its agent could have anticipated that bananas would be ordered to be cut and made ready for shipment four days before the vessel was expected to arrive at the loading port (fols. 1574, 1602). The warranty could at most have been intended to cover damage to fruit while on board the vessel, which happened by prolongation of the voyage upon which it was carried. It could not cover damage to fruit that never was shipped; and if the bananas had wholly spoiled before the *Ceres* reached Colon and so had never been loaded upon the boat, there could have been no recovery. It can make no difference that the fruit, partly damaged, was subsequently shipped; or that it did not rot until after shipment; yet thousands of dollars were awarded for just such damage.

That damages were awarded for the delay in reaching Colon, as well as for the delay upon the homeward voyage, is stated by the Commissioner in his report (fols. 1899, 1901). This, indeed, is necessarily so, because the award is for the difference between the amount realized on the sale of the bananas and the amount which it was testified would have been realized if they had arrived

sound (fols. 1900, 1902), subject to a deduction of 25 per cent. made, because the estimates of the libelants and of their supercargo, as to the amount the fruit would have brought, if none of the alleged delay had happened, and as to the running time lost between ports, were believed to be excessive (fols. 1903–8, 1929–30).

Neither the Commissioner nor the District Judge attempted to apportion the damages, but it seems that approximately half, if not more of them, were due to delay before the voyage to New York began. For the libelants' evidence was that at a speed of 11 knots, the passage from Colon to Scotland Lightship would take 177½ hours (fol. 1583), and that from the lightship to the wharf at New York, 3 hours (fol. 1605), and, upon these assumptions, the time lost between Colon and New York was stated to be, upon voyage 8, 23½ hours (fols. 1583–4), and on voyage 9, 26 hours (fols. 1599, 1604–5), while the total delay for which damages were allowed was 43¾ hours on voyage 8 (fols. 1584, 1899), and 48 hours on voyage 9; and it was found that the fruit would have been somewhat decayed even if there had been no delay at all (fols. 1906–7).

Overripeness of a single day would greatly depreciate the value of the fruit (fols. 1756–7, 1666–7, 1676), so much so as to leave no profit in the shipment (fols. 1666).

Even as to that part of the award which is for damage due to failure of speed on the voyage to New York, it may be observed here that if the *Ceres* had made full speed upon voyage 9 she would have reached New York on Sunday morning, instead of on Monday at noon (fols. 1599, 1583). Probably, therefore, she could have got her cargo on the market only a few hours earlier than she did. The evidence of the libelant's supercargo indicates that this would be so. He says that on voyage 8 the *Ceres*, if she had sailed on Saturday at midnight (fol. 1582), would not have reached New York before Monday morning at 4 o'clock (fol. 1584), although she would arrive at Scotland Lightship in 177½ hours (fol. 1583), which would make the time of her arrival Sunday morning at half past 9.

The purport of this testimony evidently is that though she arrived on Sunday morning, she could not have begun to unload before Monday.

(b.) Such part of the damages as were caused by the arrival of the vessel after nightfall, and by the intervention of Sunday, on voyage 8, are remote.

Only a small part of the delay before completing the loading at Colon was a loss of actual running time. The immediate causes of the rest of it were the arrival of the vessel after nightfall, and on voyage 8, the fact that Sunday came before the fruit was all on board, and the laborers would not work (fols. 1581-2).

These are circumstances which depended entirely upon whether the vessel happened to reach Colon, at the end of a voyage of over 8 days, a few hours earlier or later. The result was dependent upon winds, weather and other accidents that could not have been forecast at the beginning of the voyage, and obviously would baffle all calculation at the time the charter was made.

(c.) It is not proved that there was any breach of the guaranty between the time when the bananas were ordered and the time when the Ceres reached Colon to load them.

The substance of the testimony on this point is stated in the petition.

III.

The damage to the fruit resulted from the charterers' own act in sending the vessel upon the voyages, knowing that she could not make the required speed, and they are not entitled to shift the loss upon the owners of the vessel.

The question here seems to be one of fact, namely, whether the charterers expected the vessel to make better time than she did make. It was found by the District Judge that they "might still look for the fulfillment of the guaranty which the owner's representatives contended they could fulfill" (fol. 1929), and in the opinion of the majority of the Circuit Court of Appeals, it is stated that

"the continuance of the use of the vessel was not a heedless act, but was at the expressed desire of the agents and apparently upon their assurances of improved speed" (fols. 1994–5).

Judge WALLACE reached a different conclusion (fol. 2006). After saying that the owner in the early part of the charter term promised from time to time *to endeavor* to have the speed increased to conform with the warranty, he continued: "After December, 1891, however, at which time some repairs were made by the vessel, nothing was done or attempted by her owners to increase her speed, and they insisted they had done all they could, and that the charterers had waived performance. Long before the voyages in question, the charterers understood that the vessel was unable, and was likely to continue unable, to make a higher speed than she actually made upon the two voyages in question" (fols. 2006–7).

These voyages were made in April and in May, 1892. The correspondence between the parties on the subject of the vessel's speed is on the record.

On August 7, 1891, the charterers wrote: "We regret to say that from the advices we have received as to the outward trip of the *Ceres* from here, she is not doing over 10 knots per hour" (fol. 1251). On August 14th, they state: "The boat has not yet made the 11 knots you guaranteed" (fol. 1258). On September 21st, they wrote "The *Ceres* is not making the guaranteed speed and is liable to damage for same to us; we must ask you to remedy same" (fols. 1271–2). On November 4th, they wrote: "Inasmuch as the ship is not up to the speed guaranteed by the charter-party, we give you notice that we shall turn her over to you on the expiration of the present trip" (fols. 1275–6). On November 24th, they wrote to Wigg: "We to-day received a letter from Messrs. Beijer in which they advised the receipt of our letter to them as to the failure of the *Ceres* to maintain the speed provided for in the charter. They pass our complaint by unnoticed, and we to day have given them formal notice that we shall make claim upon you for damages for such failure" (fol. 1286). On the same day they wrote to Messrs. Beijer, the managers of the *Ceres*, and said: "We give you

formal notice that the ship is not up to speed " &c. (fol. 1297). On December 18th, they wrote: " Regarding the speed of the ship we have expressed our views to Messrs. Wigg and to Captain Svensson, and from their assurances we think the speed will be improved. At the same time the ship has not made the guaranteed speed as per charter " (fol. 1312). On February 5th, they wrote to the managers of the *Ceres:*

" The Vanderbilt charter that you refer to is a matter between that gentleman and ourselves only, and does not in any way concern your good selves; it is correct that we in our sub-charter to him did not give him the guarantee you gave us, but this was for the reason that we do not guarantee things that we cannot carry out; had we given him the same guarantee you gave us, we should have been speedily mulcted in damages for non-fulfillment " (fol. 1389); and they continued by saying:

" It is our present intention to continue running this boat, but we must again call to your attention that you have guaranteed her to make a certain speed and that we insist that such guarantee shall be carried out; we have, from good feeling toward Capt. Svensson, made no claim for damages, owing to non-fulfillment of this clause, as yet, but it will not be entirely safe to judge from this, that we will do the same in future. We have written you several times on this subject and do not propose to do so again " (fol. 1393).

The charterers had ample knowledge of the vessel's defects. Had they reason to suppose that they would be or had been remedied? Messrs. Beijer, the managers of the *Ceres*, on behalf of the owner, had insisted from the first that the speed guaranty had been inserted without authority (fols. 1262, 1299). On December 5, 1891, they wrote to the charterers as follows: " Our wish has always been to meet you on all reasonable points and we have instructed our captain accordingly; but if he cannot satisfy you as regards speed, we fail to see what we can do here " (fol. 1299).

There is no pretense that any assurance, representation or hint that the speed could be increased was given after the charterers' letter of February 5. When the charterers complained to the captain that the vessel had never fulfilled the guaranty (fols. 393–5), the captain answered

that he had tried his best, and if the charterers were not satisfied they must throw up the boat (fols. 393, 911), to which they replied that they preferred to keep the vessel because she was known to the trade (fol. 911).

Nothing was done to the vessel by way of repairs after December, 1891, and then nothing was done to boilers or machinery, nor was anything done that could affect the speed, except as cleaning and painting might affect it (fols. 308-309, 313, 315). That the charterers did not expect the vessel to make 11 knots an hour is conclusively shown by the schedule annexed to the letter of instructions for voyage 8, which they sent to the captain (fols. 1403-1404). A comparison of this table, with the abstract of the log (Ex. 69; fols. 1461-64) shows that the vessel, although she left New York late, arrived at Colon on schedule time. *It also shows that contrary to libelants' contention that there was a delay between the time the bananas were ordered (upon the vessel's arrival at Colon) to be ready for shipment on her return from other loading ports, the vessel got back to Colon 25 hours in advance of the schedule time.*

It shows that, in spite of having remained outside the harbor over night, she began loading four hours earlier than the schedule required; that the reason she was delayed over Sunday was not a failure in her expected speed, but apparently the fact that she had a larger cargo than was anticipated. It shows, finally, that she went from Colon to New York in a little less than the schedule time. Even the charterers did not contend that the fact that the vessel beat the schedule on voyage 8 led them to expect her to gain an additional 23 hours on voyage 9. They cannot contend that they had reason to believe the vessel would fulfill the guaranty on voyage 9, and to do them justice, they have never said they thought she could. They have brought themselves clearly within the rule that a party to a contract is bound to take care to keep the damages, in case of a breach, at as low a point as possible. In undertaking to ship fruit from Colon, they took the risk upon themselves.

Wicker v. *Hoppock*, 6 Wall., 94.
Warren v. *Stoddard*, 105 U. S., 224.

The especial attention of the Court is respectfully asked to the dissenting opinion of Judge Wallace in the Circuit Court of Appeals, which is printed as an appendix to this brief.

IV.

The petition of the claimant for a writ of *certiorari*, under the original libel, should be granted.

The question involved and discussed in the preceding points does not relate to the amount of damages which should be recovered, nor is the application made for the purpose of obtaining a revision merely in amount. It touches a question of principle, and in effect is decisive of the whole case. It is the question of the true legal rule on which damages should be awarded. The only damages claimed, with a trifling exception ($331.95), are fruit damages, so that the substance of the case is involved in the decision of the Court of Appeals upon the question of these damages.

In view of the large number of charters of this class, and of the great quantity of business which is done by American firms, under time charters of foreign vessels, the question what damages are recoverable for breach of such charters is one of general importance. It arises in the present case upon undisputed facts, and a great part of the record, which appears large, has no application to its determination.

V.

The application of the Messrs. Wessels for a writ of *certiorari*, under the cross libel, should be refused.

All of the Judges of the Circuit Court of Appeals concur in holding that the decree under the cross libel should be reversed. The majority opinion bases its decision, on this

branch of the case, upon the bad faith of the Messrs. Wessels in deducting hire for two weeks, from January 16th to January 31st, for fictitious reasons. Judge WALLACE concurred in this, and also rested his opinion upon the further ground that there was no provision in the charter party for a cessation of hire for the period of two weeks, during which the charterers deducted the hire, and that without such a provision the hire was necessarily payable during the currency of the charter.

The charterers claimed the right to lay the vessel up without pay, under the following clause of the charter-party:

"28. Steamer is to lay up for overhauling two weeks each year in winter at time charterers designate."

They gave notice on the 14th of January to the owners' agents in New York, as follows:

"We give you formal notice that we wish steamer *Ceres* to lay up for two weeks under terms of the charter party *without pay* from 17th January" (fol. 1343).

Vanderbilt, a sub-charterer, had paid hire up to the 24th (fols. 1321, 1328, 1330, 874).

It will be observed that the words "without pay" in Wessels' notice do not appear in clause 28.

The District Court, over the claimant's objection, received the following evidence as bearing on the "without pay" part of the notice:

Wessels, *loquitur:*

'Q. Had you, before this time, made other charter-parties with clause providing for laying up at charterer's option? A. I had made one.

Q. Had you known of others made by other persons? A. Yes.

Q. Both before and since this? A. Yes, sir.

Q. Have you ever known of a case, either before or since this, in which hire was claimed for the time the vessel was laid up at charterer's option?

Objected to as immaterial, and also as undertaking to explain writing by parol, and because the question is not limited to this form of charter.

Question allowed.

A. Neither before or since" (fols. 269–271).

These objections should have been sustained, and the above evidence excluded. There is no ambiguity about the clause, and unless hire is specifically stated to be deducted, under time charters, it is payable during the whole of the charter period without deduction for the time the vessel may be laid up even for necessary repairs.

Carver, Carriage by Sea, § 572.

It clearly and undisputedly appeared that at the time the steamer was ordered to be laid up she was under a sub-charter to Vanderbilt, and that the real reason for laying her up, at this time, was not the need of any overhauling, but was Vanderbilt's insolvency, in consequence of which he had to give up his charter and the steamer (fols. 1340, 1346; Exh. 37), and the further fact that the charterers, at that time, had no employment for the vessel (fols. 1348, 1368, 1370).

It is a condition of the right to lay up the vessel, under clause 28, that there should be a *need of overhauling*. If the meaning of the clause had been as charterers claimed, that they should have a right to lay the vessel up two weeks, without hire, every winter, irrespective of any need of overhauling, the clause should have been drawn to cover that case. As drawn, the right to lay up is "for overhauling," not "for charterers' convenience," as the charterers claim it means.

It is perfectly evident from the testimony that the vessel was not in need of any overhauling at the time she was laid up (fols. 337, 338, 1048, 1049). The vessel had been in dry dock and had been overhauled in New York in the previous month (fols. 326, 327, 337, 338, 1048, 1049), and she was overhauled at that time at the charterers' request (fol. 326).

The owners at once protested (Ex. 42, p. 341) against the assumption of the charterers that they could lay the vessel up for two weeks without hire, and claimed hire for a half month, beginning the 17th.

The District Judge states that the presence of this clause in the charter assumes the need of overhauling in winter (fol. 1053); which might be admitted, without reaching the conclusion that they were entitled to lay her up at

this particular time of the winter, irrespective of the need of overhauling. It must be remembered that she had been in dock, under clause 18, in the preceding month, on the charterers' order (fol. 326). In one month she would not need docking again, and, indeed, there was no dock at Mobile in which she could have been put if docking had been desired (fol. 338), although it is admitted there were facilities for overhauling the engines and mahinery, if required. None was required (336, 337, 1048-9).

Nor was the need of overhauling present to the mind of Messrs. Wessels as a reason or even excuse for laying her up at that time.

On January 14th, before they had served the notice to lay up, and while it was evidently still in contemplation that Vanderbilt might be solvent enough to pay a further installment of hire, they wrote the master as follows (fol. 1340):

"We cannot well advise you what to do with the ship until we hear from Mr. Vanderbilt; in the meantime you must simply lie there, or act under whatever orders he gives or gave you. He has paid up to the 24th, and until then is entitled to the control of your vessel. Of course, if he don't pay up on the 24th for following half month, we then have a claim on him for that half month, and perhaps for entire balance of charter."

On the 15th of January they wrote (fols. 1347-8):

"We do not to-day know just what we shall do with you; but we have given Mr Wigg notice that after present payment of hire runs out (17th, we think), you are to lay up the two weeks, so that you probably will not leave Mobile for some time yet. As soon as anything different from this turns up we shall wire you."

On the 16th January (Ex. 39, p. 338), they wrote again, agreeing the owners might run vessel on their own account during the period of the lay up. In a postscript, they refer to "our two weeks *free* lie up."

In Exhibit 46 (fol. 1368), dated January 23, writing to the master, they said:

"We regret that we have to lay you up, *but bananas won't pay to run at present, and we are doing same with the America.*"

It is thus evident that Messrs. Wessels supposed they had the right, under the charter-party, to lay the vessel up two weeks in winter, at such time as suited their convenience, without pay, irrespective of an actual need of overhauling. When they found this was not so, they claimed she did need overhauling.

As long as there was any chance that the vessel might earn hire by serving Vanderbilt from the 24th of January on, or might be taken back for a time by the owners, there was no doubt about her efficiency, or any question of overhauling; but when Vanderbilt proved insolvent, it was suddenly found that the steamer had to be laid up to begin January 17th; and it was afterwards claimed *by counsel* that this was for overhauling, although not a word was said by the charterers about overhauling at the time.

The District Judge, in his opinion, says that the repairs which were done to the steamer in the latter part of May, just at the time of the cancellation of the charter, could have been done with improvement to her service during the two weeks' lay up, beginning January 17, 1892 (fol. 1554).

This the Court of Appeals found was not supported by the evidence.

The details of the work done in May are given by Philp (p. 78), Haug (p. 150), Holmburg (fols. 468–471). They consisted in the substitution of new propeller blades (fol. 311); calking the patches on the boiler inside the furnaces (fols. 312, 313, 619, 622); putting rings in 17 out of 280 tubes in the starboard boiler, which had become thin and slightly leaky (fols. 468, 471, 602, 604); in scaling the boilers (fol. 312); in repairing a ballast tank (fol. 311); and in putting a new plate on the outside of the ship (fol. 311).

The evidence did not show that any of these repairs could have been made in January.

The new plate and the repair of the ballast tank may be left out as immaterial. The new propeller blades could not have been put on in Mobile, for want of a dock (fol. 338). The calking of the patches on the boiler inside the furnace was evidently a trifling matter, not contribut-

ing to any loss of speed; and furthermore, these were not leaking in January (fol 1049), nor was there any trouble with the furnace at that time (fol. 1049). None of the boiler tubes were then leaking (fol. 1049). The boilers had been cleaned and scaled in December (fol. 455), in April (fol. 454), and about five weeks before the time they were scaled in April, which would be the end of February or early in March (fol. 455). Very little scale was found in the boilers, even in May (fol. 613). Nothing of any kind needed to be done about the ship in January (fol. 1049).

It thus appears, by uncontradicted evidence, that not a single thing which was done to the ship in May, in New York, was necessary or could have been done at the time the vessel was laid up at Mobile in January.

Mr. Wessels distinctly states that he had no knowledge whatever that the vessel needed repairing at that time (fol. 276); and that he knew she had made better speed on the voyages immediately before and after this lay up, than she had made at any other time under her charter (fols. 277, 278), although it is admitted nothing was done to her at that time.

The amount of the work done on the steamer in December amounted to $700 or $800 (Philp, fol. 307), while that in May, which included putting a new plate in the inside of the ship, and changing the propeller only amounted to $1,400 (fols. 310, 311).

It would appear, therefore, as though more must have been done in the way of general overhauling in December than was done in May, and presumptively, therefore, there was less need of any overhauling in January.

Wessels' statement that, although without knowledge on the subject, he supposed from his experience as a steamship man, that the vessel would have needed repairing (fol. 276) cannot stand against the equally valid experience of the master, who had personal knowledge of the vessel, and has no greater interest, who states on that knowledge, that no repairs or overhauling of any kind were at that time needful (fols. 336, 337, 338, 1048, 1049, 1348).

On these facts majority of the Court of Appeals found that the attempted lay up was "a subterfuge and a mere

stratagem to evade the payment of hire" and was "an unfair artifice" (fol. 1996).

Judge WALLACE concurring in this conclusion, also held that if it had been the intention that the steamship should lay up these two weeks without pay, it would have been so stated in the clause (fol. 2015).

Under clauses 14 and 18, it was provided that when the charterers lost the use of the vessel, either from break down of the machinery, so as to prevent her working, or because of docking of the vessel, "hire shall cease," and "payment of hire to be suspended until she is again in proper state for the service" (fols. 1202, 1207).

The provision for suspension of hire in two stated cases, impliedly excludes any suspension of hire in other cases.

Carver, Carriage by Sea, § 572, on this subject says:

"If the charterer is to pay at a given rate, in proportion to the time the ship is in his employment, *he will not be allowed to make any deduction for time during which she may have been laid up for repairs, unless this has been stipulated for.* And this is so, even where the charter expressly makes it the duty of the shipowner to keep the ship in repair (*Havelock* v. *Geddes*, 10 East, 555; *Ripley* v. *Scaife*, 5 B. and C., 167). The same is true of other detentions which may occur. If they arise owing to defaults of the shipowner, there may be a counterclaim against him; but *in the absence of agreement to the contrary, the time for which the freight is to be paid runs without a break from the beginning to the end of the agreed voyage or service* (*Inman S. S. Co.* v. *Bischoff*, 6 Q. B. D., 648; 7 A. C., 670). In *Hough* v. *Head* (54 L. J., Q B., 294; affirmed 55 L. J., Q. B., 43), a time charter provided that, 'In the event of loss of time by deficiency of men, collision, breakdown of engines, and the vessel becomes incapable of steaming or proceeding for more than forty-eight working hours, payment of hire to cease until such time as she is again in an efficient state to resume her voyage.' Also damages of the seas and other perils were mutually excepted. In the course of a voyage under the charter the vessel struck something with her bottom; but she made no water, and continued working for some months after, until, on being put into drydock for inspection, it was found that her keel had been broken, and considerable damage had been done to her bottom. The charter was still running, and the charterer claimed exemption from payment of the hire until the vessel should

be fit to resume employment. In an action against underwriters for the freight thus lost it was held that the charterers were not entitled to refuse to pay the freight, the cause of the loss of time not being a 'collision.'"

See also *Moorson* v. *Greaves*, 2 Campbell, 626.

The conclusion, therefore, is that as it was manifest the charterers should have paid the two weeks' hire deducted for the lay up, and excused themselves therefrom by subterfuges and stratagems, the decree under the cross-libel should be permitted to be executed as it now stands. There is no connection or interdependence between the two suits. The decision in one affects the determination of the other in no way. They were tried together simply for convenience, as the parties, counsel and witnesses were the same in both. The application to bring up the suit of *Sydsvenska Angfartygs Aktiebolaget* v. *Wessels*, should be denied.

VI.

The claimants' petition for the writ of *certiorari* should be granted, but the application of the respondents in the cross-libel should be refused.

May 1, 1896.

Respectfully submitted,

CONVERS & KIRLIN,
Proctors for the *Ceres* and Owner, Petitioners.

J. PARKER KIRLIN,
FREDERICK GREEN,
Advocates.

APPENDIX.

UNITED STATES CIRCUIT COURT OF APPEALS.

SECOND CIRCUIT.

WESSELS *et al.*,
Appellees,

vs.

The Steamship "CERES,"
Appellant.

WALLACE, *Circuit Judge*, dissenting:

I am of the opinion that the libelants ought not to recover as damages for the breach of warranty of the vessel's speed, the consequential loss arising by decay and depreciation of the cargo upon the two voyages in question, known as the eighth and ninth voyages. The theory of the libelants is, that if upon these two voyages, the vessel had maintained the contract speed from New York to Colon and back, she would have been able to deliver her cargo of bananas at New York two days earlier than the time when she was actually ready to make delivery, and that during the two days' delay the cargo decayed. By reason of the delay it has been found that there was a depreciation in the value of the cargo upon the first voyage of $5,624, and upon the second voyage of $5,178. According to the proofs of the libelant, if the vessel had maintained her contract speed throughout her first voyage, she would have arrived at Colon on Friday, April 8, at 3 o'clock P. M., would have been able immediately to receive cargo, could have sailed the next Saturday night, and could have reached New York and commenced to discharge on the morning of April 18th, at which time the fruit was in sound condition; but that by reason of her in-

sufficient speed she did not reach Colon until 8 o'clock Saturday evening, April 8th; the next day, Sunday, the negro laborers refused to work, consequently she could not load and sail until Monday, April 11th, at noon, and did not reach New York ready to discharge cargo until the morning of the 20th, at which time the fruit had decayed. Upon the second voyage, if the vessel had maintained her contract speed, she could have reached Colon Thursday, May 5, 1891, at 1.15 P. M., could have loaded and sailed by 9.30 P. M. Friday, and could have reached New York, May 14th, at 9.30 A. M., at which time her cargo was in sound condition, and could have been discharged that day; whereas she did not reach Colon until 8.30 P. M. of May 5th, arriving at that hour could not commence loading until Friday morning, could not complete loading and sail until 8 P. M. Saturday, and did not reach New York until May 16th at noon, at which time the cargo had decayed.

The charter was for four months, with the option to the charterers to renew upon the same terms for a year longer, and contained a condition that they might cancel the contract at any time upon thirty days' notice. Its provisions indicated that the vessel might be employed in carrying fruit cargo, but the charterers were at liberty to employ her in any other kind of transportation at their pleasure between ports in Canada or the United States and the West Indies or Central or South America; and they were at liberty to sublet the vessel or assign the charter. The speed warranty was as follows: "The owners guarantee the steamer to make an average speed under steam of not less than eleven knots per hour, fruit or light laden, in moderate weather, and with good American coal." Before the charterers exercised their option to renew the charter, the vessel had been unable to make the contract speed. Her owners had insisted that the speed guarantee was inserted in the charter by their brokers without authority from them. Nevertheless, before and after the renewal, they had promised from time to time to endeavor to have the speed increased to conform with the warranty. After December, 1891, however, at which time some repairs were made to the vessel, nothing was done or attempted

by her owners to increase her speed, and they insisted that they had done all they could and that the charterers had waived performance. Long before the voyages in question the charterers understood that the vessel was unable, and was likely to continue unable, to make a higher speed than she actually made upon the two voyages in question. February 5, 1891, they wrote to the owners as follows: "We note that you consider that we have waived certain clauses of the *Ceres*' charter and that we shall not run her after March 1st; we do not know where you got this information, but it is entirely incorrect; we have waived no clauses of the charter and until you receive proper notice that we shall stop running her it is not your province to assume that we shall give her up at any time. * * * It is our present intention to continue running this boat, but we must again call to your attention that you have guaranteed her to make a certain speed, and that we insist that such guarantee shall be carried out. We have, from good feelings towards Captain Svensson, made no claim for damages, owing to non-fulfillment of this clause, as yet, but it will not be entirely safe to judge from this that we will do the same in the future. We have written to you several times on this subject, and do not propose to do so again." There is no pretense that from the time that letter was sent the libelants were under any expectation that the owners would endeavor to increase the speed of the vessel.

The libelants have been awarded damages for a loss which was not such a probable and necessary consequence of a breach of the warranty, as may fairly be supposed to have entered into the contemplation of the parties when the contract was made. Such a recovery is not sanctioned by authority Griffin *v.* Colver (16 N. Y., 489); Baldwin *v.* U. S. Telegraph Co. (45 N. Y., 744); Murdock *v.* Boston and Albany R. R. Co. (133 Mass., 15); Pennybacker *v.* Jones (106 Penn. St., 237); Howard *v.* Stillwell Company (139 U. S., 199).

If the present warranty had been contained in a charter for a single voyage between specified ports for the transportation of a fruit cargo, a loss caused by a decay of the

fruit upon the voyage in consequence of the inability of the vessel to perform her contract, might properly be considered to fall within the established rule of damages. But the warranty was contained in a charter which was practically for sixteen months, and which authorized the charterers to engage in carrying any kind of cargo, and make a great variety of voyages. The contract was not that she should make the specified speed under all circumstances, but only that she should do so in moderate weather. The many voyages that might be made during the charter period were subject to contingencies which it was impossible to forecast. The conjectural character of the loss which was likely to occur in case of a breach of the warranty is illustrated by the one which actually took place. Because of five hours' delay upon the first voyage in arriving at Colon, the vessel has been made responsible for the consequences of the delay there of thirty-six hours, and the refusal of the laborers to work. If she had started a day earlier Sunday would not have intervened. A delay of thirty hours might not have resulted in the decay of the fruit. If the weather upon the voyage had been colder possibly the delay would not have materially injured the cargo; if it had been hotter possibly the loss would have been very much larger; and if the vessel had encountered heavy storms notwithstanding she had made her contract speed, her cargo might have been ruined by the delay. Whether a cargo of fruit would be injured upon any voyage by reason of the vessel's inability to make the contract speed would depend upon the condition of the fruit when shipped, the length of the voyage, the condition of the weather, and other circumstances which could not be anticipated. Whenever special or extraordinary damages, such as would not naturally or ordinarily follow a breach, have been awarded for the non-performance of contracts, it has been for the reason that the contracts have been made with reference to peculiar circumstances known to both parties, and the particular loss has been in the contemplation of both, at the time of making the contract, as a contingency that might follow the non-performance.

Aside from the objection that the damages which have

been awarded are too remote and too speculative, there are graver objections to the recovery. The libelants having been aware that there was no probability that the vessel would be able to maintain the contract speed, had no right to undertake to transport fruit cargoes upon long voyages, during which a few hours delay might entail an enormous loss by decay, with the expectation of shifting such loss upon the vessel owners. It was their right to refuse to keep the ship, and rely upon a legitimate claim for damages. Such damages would have consisted in a recovery of the cost of procuring a substituted vessel for the rest of the charter term, and for the difference in value during the prior period of the charter between a vessel such as the contract called for and such as they had received. The party injured by the breach of a contract can charge the delinquent with such damages only as with reasonable endeavors and expense he could not prevent; it is his duty to use reasonable diligence to reduce the damages arising from the breach as far as practicable. Wicker *v.* Hoppock (6 Wall., 94); Warren *v.* Stoddart, (105 U. S., 224); Bagley *v.* The Cleveland Rolling Mill Co. (22 Blatch., 342, 351); The *Oregon* (6 U. S. App., 581). Reason and good conscience will not permit him to claim damages which arise in consequence of his own inactivity, still less with such as arise from his own reckless and improvident conduct. Not content with the experiences of the first of the two voyages in question, the libelants undertook the second with the full knowledge of all the chances which might arise; and by the judgment of the majority of the Court this experiment has been sanctioned, and the heavy loss which has resulted from it has been shifted from those who undertook the hazards, with the full knowledge of the risks, upon the vessel owners.

I am also of the opinion that, in the absence of any provision in the charter to that effect, the hire was not to cease during the two weeks lay-up of the vessel; but as the Court has reached the conclusion upon other grounds that the appellant is entitled to recover the hire during that period, I do not care to enter upon a discussion of the question.

992 & 993

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895

No.

GERHARD WESSELS ET AL
Libelants, Appellees

against

THE STEAMSHIP *CERES*, HER ENGINES, &C., OLAF S. SVENSSON, CLAIMANT, AND SYDSVENSKA ANGFARTYGS AKTIEBOLAGET, RESPONDENT,
Appellants

SYDSVENSKA ANGFARTYGS AKTIEBOLAGET
Libelant, Appellant

against

GERHARD WESSELS ET AL
Respondents, Appellees

RECORD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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United States District Court,

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS *et al.*,
Libellants & Appellees,

vs.

The Steamship CERES, her Engines, &c.,
OLAF J. SVENSSON,
Claimant & Appellant,
and SYDVENSKA ANGFARTYGS AKTIEBOLAGET.

SYDVENSKA ANGFARTYGS AKTIEBOLAGET,
Libellant & Appellant,

vs.

GERHARD WESSELS *et al.*,
Respondents & Appellees.

1892
Aug. 2 Libel filed in first above-entitled suit.
Sept. 19 Answer filed in first above-entitled suit.
1893
Oct. 10 Amendment to answer filed in first above-entitled suit.
1892
Sept. 19 Libel filed in second above-entitled suit.
1893
Feby. 20 Answer filed in second above-entitled suit.

5 Nov.15-21 Causes tried together before Hon. Addison Brown, District Judge.

1894

April 7 Opinion rendered, directing decree to be entered for libellants in first suit, with reference to ascertain amount of damages, and dismissing libel in second suit with costs.

May 22 Interlocutory decree and order of reference to E. N. Taft, Esq., entered in first suit.

6 Sept. 4 Commissioner's report filed.

6 Libellant's exceptions to Commissioner's report filed.

8 Claimant's exceptions to Commissioner's report filed.

Oct. 16 Exceptions to Commissioner's report argued.

Oct. 20 Opinion rendered on hearing of exceptions.

Oct. 26 Final decree entered.

Nov. 5 Notice of appeal filed.

1895

7 Feby. 5 Assignment of errors filed.

1894

Oct. 26 Final decree entered in second suit.

Nov. 5 Notice of appeal filed.

1895

Feby.12 Assignments of error filed.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York.

The libel of Gerhard Wessels and Charles T. Wessels against the steamship *Ceres*, her engines, &c., and against all persons claiming any interest therein, as well as against the Sydsvenska Angfartygs Aktiebolag, the owner thereof, in a cause of contract, civil and maritime, alleges as follows:

FIRST.—The libellants were, at the times hereinafter mentioned, and are now, merchants doing business in the City of New York under the firm name of G. Wessels & Company, and reside in the City of Brooklyn. The Aktiebolag above named is a foreign stock company or corporation whose principal office is at Malmö, Sweden, and is joined as respondent herein, as it is and was at all the times hereinafter mentioned the sole owner of said steamer *Ceres*.

SECOND.—On or about the 25th day of May, 1891, E. J. Rudgard, Wigg & Company, agents for the owner of said steamship *Ceres*, of Malmö, Sweden, of 581 tons net register, made and entered into an agreement in writing with the libellants, whereby in behalf of the owners of said vessel they chartered the same to the libellants for a period of four calendar months from the time of delivery of said vessel at the port of Livingston, Guatemala. For greater certainty in the premises, the libellants refer to the original charter to be produced upon the trial hereof, a copy of which, marked "A," is made a part of this libel.

THIRD.—As a means of inducing libellants to hire said steamer in their fruit business, where speed and punctuality are of vital importance, there was an express written guarantee of the speed of the *Ceres* indorsed upon said charter-party, at the time of the execution thereof, in the following words:

"The owners guarantee the steamer to make an

13 "average speed under steam of not less than 11 knots "per hour fruit or light laden, in moderate weather "and with good American coal." Libellants relied upon said guarantee, and had no other knowledge of the actual speed of said steamer, than as contained in said charter-party, except the statements of the steamer's agents that the steamer had been making 12 to 13 knots per hour and would do so in future.

FOURTH.—On or about July 2d, 1891, said steamship
14 was delivered to libellants' agents at the port of Livingston, and made several voyages under said charter. In November following the libellants exercised the option given them by the said charter-party, for an extension of the hiring, for a further period of twelve calendar months, subject to discontinuance during such extended period on notice as provided by clause thirteen thereof.

FIFTH.—Notwithstanding said guaranty said steamer failed to make an average speed of eleven knots, al-
15 though the master and agents of the respondents promised to remedy defects and assured libellants that the steamer should comply with the terms of the guaranty. Finally the master reported to libellants in March, 1892, that the *Ceres* had averaged over 11 knots speed, and would make that speed thereafter. The libellants again put the steamer into their fruit business, and loaded the *Ceres* with fruit on two subsequent voyages, but the steamer wholly failed to make the guaranteed speed, and her boilers were found to be inefficient and
16 leaking, and to have been in a bad and inefficient condition since the beginning of the charter-party, although that fact had not been known to libellants; whereupon, and on or about May 18, 1892, the libellants rejected said vessel, and delivered her up to her agents in New York for said breach of charter-party.

SIXTH.—By clause 21 of said charter-party, it was agreed that the said steamer should be provided with cotton-duck awnings sufficient to shed rain; but that no such awnings were provided, and that, as was after-

wards ascertained, rain passed through the improper awnings which did not shed the rain, and went down the hatches, resulting in great damage to the fruit, which was the property of the libellants. 17

SEVENTH.—By reason of the premises the libellants have been damaged upwards of $8,000, no part of which has been paid, although payment of the same has been duly demanded.

EIGHTH.—At the time of re-delivery of said steamer, there were eighty-four tons of coal left in the steamer's bunkers. Under clause No. 2 of the charter-party, the owners were to pay therefor at the current market price, which was at the rate of $3.75 per ton, amounting to $315.00, no part of which has been paid. 18

NINTH.—Said steamer is now within the district and within the jurisdiction of this Court. The said owner of the steamer, who is joined as respondent is a foreign company or corporation no officer of which resides within this State, or District, and none of them are now within this jurisdiction, but the said company has property within this District subject to attachment, to wit, the said steamship *Ceres*, and her freight moneys. 19

TENTH.—All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore, libellants pray that process issue against said steamer *Ceres*, that the same be arrested, that all persons having any interest therein be cited to appear and answer all and singular the foregoing averments of the libel; and that said steamer, her engines, etc., be condemned to pay the libellants said damages. Also that process *in personam* issue with a clause of foreign attachment against said Sydsvenska Angfartygs Aktiebolag, as owner of said vessel, and that said vessel and her freight moneys be attached, that thereby an appearance of said respondent be secured; that said respondent be adjudged to pay to the libellants the afore- 20

said sums as damages, with interest and costs, and that libellants have such further order and relief, as they may be entitled to receive.

C. T. WESSELS.

Sworn to by said Charles T. Wessels for himself and his co-libellant, this second day of August, 1892.

JAMES FORRESTER,
Notary Public,
Kings Co.

[SEAL.]

Cert. N. Y. Co.

WING, SHOUDY & PUTNAM,
Proctors for Libellants.

[Endorsed:]—Libel—Filed Augut 2, 1892.

A.

(Copy.)

G. WESSELS & Co.,
67 & 69 Front St.,
New York.

Cable Address:
Wessels, New York.

West India Agents
E. J. WESSELS & Co.,
St. Ann's Bay,
Jamaica.

Cable Address:
Wessels, Jamaica.

TIME CHARTER.

NEW YORK FRUIT FORM.

Form 3.

THIS CHARTER PARTY, made and concluded in the City of New York the 25th day of May, 1891, between E. J. Rudgard Wigg & Co., Agents for owners of the good Screw Steamship *Ceres*, of Malmo, Sweden, of 873 tons gross register, and 581 tons net register, and 720 tons dead weight capacity exclusive of Bunkers which are of 100 tons capacity about; and of 63300 cubic feet clear cargo capacity exclusive of Bunkers; and to load 720 tons weight of cargo in addition to coal for days consumption at highest speed ves-

sel can make, on feet draft; having engines of 25
200 nominal horse-power, provided with proper certificates for hull and machinery, and guaranteed to class 100 A1 at Lloyds, and G. Wessels & Co., Merchants of the City of New York.

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said steamship, from the time of delivery at the Port of Livingston, Guatemala, for a period of (4) four calendar months, she having cleaned bottom before leaving Europe, to enter upon this Charter. It is agreed that the steamer 26
is to leave Tyne, England, in ballast, on or about no later than 2d June, she being on her delivery at the said Port, ready to receive cargo, and being tight, staunch, strong and in every way fitted for the service, having all necessary dunnage, water ballast, steam winches and donkey boiler with capacity to run all the steam winches at the same time. The steamer is to have a full complement of officers, seamen, engineers and firemen for a vessel of her tonnage and is to be employed in carrying lawful merchandise, in- 27
cluding petroleum or its products, in cases, (and passengers so far as accommodations will allow, but any expense to suit U. S. passenger inspection to be borne by Owners); between port and ports in Canada and/or other British possessions not north of River St. Lawrence (steamer to leave the St. Lawrence by the 31st of October,) and/or the United States of America and/or West Indies and Gulf of Mexico, and/or Carribean Sea, and/or Central America, and/or South America, not south of the River Platte, as the Charterers or their agents 28
shall direct on the following stipulations:

1. That the Owners shall pay and provide for all provisions, wages and consular shipping and discharging fees of Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel, also for all engine-room and deck-stores, and maintain her in a thoroughly efficient state in hull and machinery for and during this Charter, guaranteeing to maintain the boilers in a condition to bear the working pressure

29 allowed the steamer by her certificate, (and this pressure is to be carried continuously while under steam during the whole term of this charter), and to victual and provide for all passengers in the best manner according to their class, Charterers paying at the rate of 4/– sterling per day for each first-class passenger, which rate is to include all service except Liquors and Wines; the vessel is to provide a liberal table.

2. That the Charterers shall provide and pay for all the coal, port charges, pilotages, agencies and commis-
30 sions, and the Charterers shall accept and pay for all coal in the steamer's bunkers on delivery, at the rate of $4.00 per ton, and the Owners shall, on expiration of this Charter, pay for all coal left in the bunkers at the current market price, but not to exceed $4.00 per ton, at the respective port where she is delivered to them. It is understood that the steamer must have sufficient coal in bunkers on delivery to Charterers of not less than (12) twelve days' coal on arrival at Livingston, Guatemala.

31 3. That the Charterers shall pay for the use of said vessel (£650 " 0 " 0) six hundred and fifty pounds sterling lump sum, per calendar month, commencing from the time the vessel is entered at the Custom House and placed with clear holds at Charterer's disposal, but between 6 A. M. and 6 P. M. and at and after the same rates for any part of a month, hire to continue from the time specified for terminating the Charter until her delivery to owners (unless lost) at a port in the United States.

32 4. Payment of said hire to be made in Cash in New York at the rate of $4.83 per £ sterling, half-monthly in advance at beginning of each half month from the date of delivery of steamer, and in default of such payment after three days have elapsed without such payment having been made the Owners shall have the faculty of withdrawing the said steamer from the service of the Charterers without prejudice to any claim they, the Owners, may otherwise have on Charterers in pursuance of this Charter; cash for ship's necessary disbursements, if desired by master, but not exceeding

£250 monthly, to be supplied by Charterers to the captain at current rate of exchange, subject to a commission of 2½ per cent. plus actual Insurance to cover all charges, and captain's receipt or other evidence of payment is to be taken as part payment of the freight. 33

5. That should the steamer be on her voyage towards the port of return delivery at the time a payment of hire comes due, said payment shall be made for such a length of time as Owners' agents and Charterers or their agents may agree upon as the estimated time necessary to complete the voyage, and 34 when the steamer is delivered to Owners' agent, any difference shall be refunded by steamer or paid by Charterers, as the case may require.

6. That the cargo or cargoes shall be laden and/or discharged with the assistance of the steamer's crew and tackle, in any dock or at any wharf or place that the Charterers or their agents may direct, provided the steamer can always safely lie afloat at all times of tide.

7. That the whole reach of the steamer's holds, decks and all places of loading and passenger accommo- 35 dation of the steamer (not being more than she can reasonably carry and stow), shall be at the Charterers' disposal, reserving only proper and sufficient space for the ship's officers, crew, tackle, provisions and stores.

8. That the Captain shall prosecute his voyages with the utmost dispatch, and take every advantage of wind by using the sails with a view to economize fuel, and shall render all possible assistance with ship's crew and boats.

9. That the Captain, although appointed by the Own- 36 ers, shall be under the orders and direction of the Charterers as regards employment, agency or other arrangements; and the Charterers hereby agree to indemnify the Owners from all consequences or liabilities that may arise from the Captain signing Bills of Lading, or otherwise complying with their orders and directions.

10. That if the Charterers or their agents shall have reason to be dissatisfied with the conduct of the Captain, officers or engineers, they shall make such complaint in writing to an agent in New York to be spe-

cially appointed by Owners, who shall have full power to act on their behalf, and if necessary dismiss any of the officers should he find the complaints made by Charterers are justified.

11. That the Charterers shall have permission to appoint a Super-cargo who shall accompany this steamer and be furnished free of charge with first-class accommodations, and to see that the voyages are prosecuted with the utmost dispatch; the officers and crew to follow his directions and instructions in putting on and taking off hatches, turning steam on heating pipes, ventilation, etc., the victualling of the supercargo to be paid for by the Charterers at the rate of (4/-) four shillings per day.

On receipt of advice of delivery of the steamer at Livingston, Guatemala, the Charterers agree to pay in advance (1) one month's hire, the balance of hire to be paid as provided for in this Charter Party. The owners guarantee the steamer to make an average speed under steam of not less than eleven (11) knots per hour, fruit or light laden in moderate weather and with good American coal.

12. That the master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct log of the voyage or voyages, which are always to be open to inspection of the Charterers or their agents, and an abstract of which shall be handed Charterers on each arrival in New York. Captain is to report at Charterers' office or agency each day while in port as often as requested.

13. That the Charterers shall have the option of continuing this Charter for a further period of (12) twelve calendar months on giving notice thereof to the Owners or their agents (30) thirty days previous to the expiration of such named term, Charterers having the option to cancel this Charter Party during the extended period upon giving (30) thirty days' notice to the owners or their agents.

14. That in the event of loss of time from deficiency of men or stores, break down of machinery or damage

preventing the working of the steamer at sea, the pay- 41
ment of hire shall cease and steamer shall be consid-
ered as temporarily off this charter from time of such
occurrence until she is again in an efficient state to re-
sume her service, at the place where such occurrence
happened, and all coals and other property of the Char-
terers, or freight, used or destroyed and all expenses
incurred during such time are to be paid for by the
steamer and owners ; but should the vessel be driven
into port or to anchorage by stress of weather or from
any accident to the cargo, such detention or loss of 42
time shall be at the Charterers' risk and expense; also,
if any loss of time from crew or stores not being on
board in time, or from repairs to hull and machinery,
which are for Owners' account, not being complete at
hour of sailing fixed by Charterers, and notice thereof
having been given to Captain or ship's agents, the
time lost is for steamer's account.

15. That should the vessel be lost, wrecked, &c., any
hire paid in advance and not earned (reckoning from
the date of her loss) shall be returned to the Charter- 43
ers with interest from date of loss by the steamer's
New York agents within 15 days from application
therefor. If date of loss be unknown at end of 30 days
it is to be assumed to be five days from time vessel last
left port. The Act of God, the King's Enemies, Fire,
Restraints of Princes, Rulers and People, and all other
Dangers and accidents of the seas, rivers, machinery,
boilers, and steam navigation throughout this Charter
Party always excepted.

16. That should any dispute arise between Owners 44
and Charterers, the matters in dispute shall be referred
to three persons in New York, one to be appointed by
each of the parties hereto and the third by the two so
chosen ; their decision or that of any two of them shall
be final, and for the purpose of enforcing any award,
this agreement may be made a rule of Court. One
arbitrator may act in place of these three, if mutually
agreed upon.

17. That the Owners shall have a lien upon all car-
goes and all sub-freights for any amounts due under this

Charter, and the Charterers shall have a lien upon the ship for all moneys paid in advance and not earned, and for any other claims arising under the Charter Party.

18. Ship's bottom to be kept properly cleaned and painted, and steamer to be docked whenever Captain and Charterers may think it necessary, but at least once in every four months. And payment of the hire to be suspended until she is again in proper state for the service.

19. 2½ per cent. address commission payable to Charterers.

20. Steamer to work night and day if required by Charterers, and all steam winches to be at Charterers' disposal during loading and discharging. Steamer to provide men to work winches both day and night as required, Charterers agreeing to pay for any night work incurred. Steamer is to enter and leave Ports at night, if Pilot on board decides it to be safe.

21. That the steamer be provided with cotton duck awnings (sufficiently heavy to shed rain) throughout, during the whole of this Charter, also with 24-inch diameter wind sails for each hatch, besides stationary ventilators placed throughout the deck as Charterers may direct.

22. That the steamer shall be provided either with loose planks, 2 to 2½ inches thick, to make a platform or deck all through the vessel's holds with beams for such temporary platform or deck to rest on, building the same strong enough to hold tiers of fruit, or a regular fruit deck to be subject to approval of Charterers.

23. That the crew is not allowed under any circumstances, to carry Bananas or other merchandise for their own account. Donkey boiler not to be worked when carrying Bananas.

24. That should the steamer have an iron deck, the Owners shall have the same sheathed all over with 2½ inch planks before entering on this Charter, or otherwise Charterers to do it at Owners' expense.

25. That in the event of cholera being epidemic in the U. S. Atlantic ports, Charterers to have option of cancelling this Charter Party on giving Owners or agents [15] fifteen days' notice of such intention.

26. This steamer is not allowed to stop to pick up any wreck or in any way assist, or tow any vessel, except in order to save human life.

27. In case any casualty to the steamer disables her from carrying out this Charter for thirty days, Charterers have the option of cancelling this Charter.

28. Steamer is to lay up for overhauling two weeks each year (in winter at time Charterers designate).

29. Steamer is to be kept painted the line colors of Charterers' Line (Buff Funnel and Ventilators and Lead Color Hull).

30. Steam pipes sufficient to keep hold heated in Winter to be placed around Holds and tween Decks as Charterers may wish; any extra steam pipes beyond which the vessel now has to be fitted at the expense of the Charterers, it being understood that the 'tween decks are now fitted.

31. Charterers have right to sublet this vessel or assign this Charter to responsible parties.

32. If this vessel is not delivered to Charterers' Agents at the Port of Livingston, Guatemala, in readiness to load on or before the fifth day of July, 1891, Charterers have the option of cancelling this Charter.

33. Any writings attached to or forming part of this Charter Party are to supersede any conflicting printed matter.

34. That a commission of 5 per cent. upon the gross amount of this Charter, and usual freight brokerage, payable by steamship and Owners, is due to R. Williams, Jr., upon signing hereof, steamship lost or not lost. And also upon any continuation or extension of this Charter or on sale of vessel.

35. It is agreed that the penalty for the non-per-

formance or violation of this contract is to be the estimated amount of damages.

(Signed) E. J. Rudgard Wigg & Co.
By cable authority.

Witness to the signature of the Agents for Owners,
(Sgd.) R. Williams, Jr.

(Sgd.) G. Wessels & Co.
25th May, 1891.

Witness to the signature of the Charterers,
(Sgd.) R. W. Williams, Jr.

We certify the above to be a true copy of the original Charter Party in our possession.

E. J. Rudgard Wigg & Co.,
Brokers.

To the Honorable Addison Brown, Judge of the District Court of the United States, for the Southern District of New York:

The answer of Olaf J. Svensson, claimant and master of the steamship *Ceres*, and the Sydsvenska Angfartygs Aktiebolaget (South Swedish Steamship Company), respondent, owner of the said steamship, to the libel of Gerhard Wessels and Charles T. Wessels against the steamship *Ceres*, her engines, &c., and against all persons claiming any interest therein, as well as against the Sydsvenska Angfartygs Aktiebolaget (South Swedish Steamship Company), the owner thereof, in a cause of contract, civil and maritime, alleges as follows:

First.—The claimant and respondent admit the allegations of the first paragraph of the libel.

SECOND.—The claimant and respondent admit the al- 57
legations of the second paragraph of the libel.

THIRD.—The claimant and respondent admit the allegations of the third paragraph of the libel.

FOURTH.—The claimant and respondent admit the allegations of the fourth paragraph of the libel.

FIFTH.—The claimant and respondent admit that during most of the voyages made under said charter-party the steamship *Ceres* failed to make an average 58
speed under steam of eleven knots per hour, fruit or light laden in moderate weather, but alleges that such failure in moderate weather was due to the neglect of her charterers to supply said steamship with good American coal, and that the coal which the charterers furnished said steamship was of such poor and inferior quality as to prevent her from making her guaranteed speed. They deny that the boilers of said steamship were found to be in such a bad and inefficient condition as to contribute in any degree to her failure to 59
make her guaranteed speed with good American coal, and allege that the charterers were familiar with the condition of her boilers during the entire period covered by the said charter-party.

SIXTH.—The claimant and respondent admit that by clause 21 of the said charter-party it was agreed that the said steamer should be provided with cotton duck awnings sufficient to shed rain, but they deny that rain passed through the awnings by reason of their defect, or 60
that they failed to shed rain, or that rain went down the hatches by the reason of the insufficency of said awnings, whereby great damage was done to the fruit, and allege on the contrary that sufficient and proper awnings were furnished, and that part of them were furnished by the charterers themselves.

SEVENTH.—The claimant and respondent deny that by reason of the premises the libellants have been damaged upwards of $8,000, or in any sum whatever.

61 EIGHTH.—The claimant and respondent admit the allegations of the eighth paragraph of the libel, subject, however, to their claims by the respondent against the libellants as set forth in the cross-libel.

NINTH.—The claimant and respondent admit the allegations of the ninth paragraph of the libel.

TENTH.—The claimant and respondent deny that all and singular the premises are true, but admit the admiralty and maritime jurisdiction of this Honorable
62 Court.

ELEVENTH.—Further answering herein the claimant and respondent allege that the libellants employed said steamship under the provisions of said charter-party for a period of four months, and that thereafter, with full knowledge of her failure to make an average speed under steam of eleven knots per hour, fruit or light laden in moderate weather, with such coal as they were furnishing, extended said charter-party in accordance
63 with the 13th clause thereof.

TWELFTH.—The claimant and respondent allege that all and singular the premises of this answer are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, the claimant and respondent pray that the libel be dismissed with costs, and that they may have such further or other relief as they may be entitled to receive.

64 CONVERS & KIRLIN,
Proctors for Claimant & Respondent.

Southern District of New York, ss.:

E. B. CONVERS, being duly sworn, says that he is one of the firm of Convers & Kirlin, proctors herein for the claimant and respondent, who are absent from this district; and that deponent's said firm is authorized

to act for them herein ; and that the foregoing answer 65
is true according to deponent's information and belief.

E. B. CONVERS.

Sworn to and subscribed before me this 21st day of September, 1892.

DUNCAN EDWARDS,
[SEAL.] Notary Public,
Kings Co.

Cert. filed N. Y. Co.

[Endorsed :]—Answer.—Filed Sept. 30, 1892. 66

To the Honorable ADDISON BROWN, United States District Judge for the Southern District of New York.

GERHARD WESSELS *et al.*,
Libellants,

vs.

The S. S. CERES and SYDSVENSKA ANGFARTYGS AKTIEBOLAGET,
Respondent.

Amendment to the Answer of Olaf J. Svensson, claimant of the steamship *Ceres*, and the Sydsvenska Angfartygs Aktiebolaget (South Swedish Steamship Company), respondent, owner of the said steamship, is as follows: 67

FIRST.—Strike out Article Fifth of the Answer and insert in lieu thereof the following : 68

"FIFTH.—The claimant and respondent admit that during most of the voyages made under said charter party the steamship *Ceres* failed to make an average speed under steam of eleven knots per hour, but allege that such failure was due to the fact that the steamer was not fruit or light laden, and that the voyages were not made in moderate weather, and that on such voyages the charterers failed to supply the steamer with good American coal, that which was furnished having been too much broken and of inferior quality by reason

69 of too much fine coal and dust. They further allege that on several of her voyages under this charter party, when she was furnished with a better grade of coal, the steamer made more than average speed of eleven knots an hour in moderate weather. They deny that the boilers of said steamship were found to be in such a bad and inefficient condition as to contribute in any degree to her failure to make guaranteed speed with good American coal, and allege that the charterers were familiar with the condition of her
70 boilers during the entire period covered by the charter party and the extension thereof."

CONVERS & KIRLIN,
Proctors for Claimant and Respondent.

Southern District of New York, ss.:

OLAF J. SVENSSON, being duly sworn, says that he is claimant of the steamship *Ceres*, and agent for the respondent, the South Swedish Steamship Company, and
71 that the foregoing amendments are true. He further says that the reason why these amendments are not verified by the South Swedish Steamship Company, respondent, is that said company is a foreign corporation; that deponent is authorized as their agent to act for them herein; that he was master on all the voyages made by the steamer under the charter party mentioned in the libel, and has personal knowledge of the facts stated in these amendments.

OLAF J. SVENSSON.

72 Sworn to before me this 7th day of October, 1893.

GEORGE A. BAKER,
(L. S.) Notary Public,
New York County.

[Endorsed:]—Amendments to Answer.—Filed Oct. 10, 1893.

73

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The cross libel of the Sydsvenska Angfartygs Aktiebolaget, a corporation organized under the laws of Sweden, with its principal office at Malmö, owner of the steamship *Ceres*, against Gerhard Wessels and Charles T. Wessels, of the City of Brooklyn, merchants under the name of Wessels & Co., in a cause of contract, civil and maritime, alleges as follows: 74

FIRST.—That at the times hereinafter mentioned the libellant was, and now is, a corporation organized under the laws of Sweden, with its principal office at Malmo, and is the owner of the steamship *Ceres*. That the respondents herein are merchants doing business in the City of New York under the firm name of G. Wessels & Co., and reside in the City of Brooklyn.

SECOND.—That on or about the 25th day of May, 1891, E. J. Rudgard, Wigg & Co., of New York, 75 agents for the owner of said steamship *Ceres*, entered into an agreement in writing with the respondents whereby, on behalf of the owner of said steamship, they chartered her to the respondents for a period of four calendar months from the time of her delivery to them at the port of Livingston, Guatemala; and for greater certainty in the premises the libellant refers to a copy of the original charter to be produced upon the trial of this action.

76

THIRD.—That by clause 28 of said charter-party it was provided that: "The steamer is to lay up for overhauling two weeks each year (in winter at time charterers designate)." That on the 14th day of January, 1892, while the said steamship was at the port of Mobile, the charterers gave to the master and to the owner's agents at the port of New York, formal notice that she was to lay up for two weeks from the 17th day of January without pay in accordance with the terms of the charter-party. That during the pre-

77 ceding month the said steamship had been docked and overhauled in the port of New York, and was in no need of overhauling at the time of her directed lay-up there, and no attempt was made to overhaul her at the port of Mobile. That her agents in New York duly protested against the said directed lay-up, and that by reason of the premises, the charterers became indebted to the owner of said steamship for one half month's hire, amounting to £325 stg., which sum was demanded before the commencement of this action, and
78 is still due.

FOURTH.—That by clause 13 of said charter-party, it was provided: "That the charterers shall have the option of continuing this charter for a further period of twelve calendar months, on giving notice thereof to the owners, or their agents, thirty days previous to the expiration of such named term, charterers having the option of cancelling this charter-party during the extended period upon giving thirty days notice to the
79 owners or their agents." That thereafter and on or about October 2, 1891, the charterers gave due notice to the owner's agents at the port of New York, that they renewed the said charter-party in accordance with its provisions.

FIFTH.—That on the 18th day of May, 1892, the respondents gave notice to the owner's agents that they cancelled the said charter-party forthwith, and that they refused to employ said vessel further, or to
80 pay any hire therefor. That subsequently her owner re-chartered said steamship to H. Dumois & Co. of New York for the monthly hire of £600 stg., which was the best rate then procurable; and that by reason of the failure of the charterers to give the thirty days notice to cancel as required by the provisions of said charter-party, the owner of said steamship suffered a loss in the sum of £50 stg., which sum was duly demanded of the respondents before the commencement of this action, and is still due.

SEVENTH.—That all and singular the premises of this

libel are true, and within the admiralty and maritime 81
jurisdiction of this Honorable Court.

Wherefore, the libellant prays that process in due form of law, according to the course of practice in causes of admiralty and maritime jurisdiction, may issue and that Gerhard Wessels and Charles T. Wessels, the respondents, may be cited to appear and answer the matter of this libel, and that a decree may be entered against them for the amount of said claim, to wit: for the sum of £325 stg., equivalent in the currency of the United States to $1,586, with interest 82
thereon from the 15th day of January, 1892, and for the sum of £50 stg., equivalent in United States currency to $244, with interest thereon from the 18th day of May, 1892, and for the sum of $750, with interest thereon from the 18th day of May, 1892, amounting to $2,580, together with the costs of this action, less the sum of $315, which the libellant admits to be due to the respondents according to the prayer of their libel. And the libellant prays such other and further relief as it may be entitled to receive. 83

CONVERS & KIRLIN,
Proctors for Libellant.

Southern District of New York, ss.:

E. B. CONVERS, being duly sworn, says that he is one of the firm of Convers & Kirlin, proctors herein for the libellant, which is absent from the district, being a foreign corporation organized under the laws of Sweden, where its officers reside. That deponent's said firm is authorized to act herein for the said libel- 84
lant, and that the foregoing libel is true accordiug to deponent's information and belief.

E. B. CONVERS.

Sworn to and subscribed before me this 15th day of September, 1892.

GEO. GORDON BATTLE,
[SEAL.] Notary Public,
N. Y. Co.

[Endorsed:]—Cross-Libel—Filed Sept. 19, 1892.

85

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York.

GERHARD WESSELS and CHARLES T. WESSELS, answer the libel against them of the SYDSVENSKA ANGFARTYGS AKTIEBOLAGET, as follows:

FIRST.—The respondents admit the allegations of the first and second articles of the libel.

86

SECOND.—The respondents admit the quotation from clause 28 of the charter party. They admit that in the winter of 1892, while the *Ceres* was at Mobile, they gave notice to lay up the *Ceres* under said clause, designating two weeks from January 17, 1892. They admit that no attempt was made to overhaul the *Ceres* at Mobile, and that her agents objected to the laying up the steamer at that time. And further answering, these respondents deny every allegation of the third
87 article of the libel, save as herein admitted.

THIRD.—In reference to clause 13 of the charter party, these respondents refer to the original thereof, and they admit the other allegations of the fourth article of the libel.

FOURTH.—These respondents admit that on or about the day of May, 1892, they gave notice that they should not longer employ the *Ceres* as she was not up to the guarantees of the charter. And further answer-
88 ing, these respondents deny that they ever cancelled the charter, or that they have ever availed themselves of any right to do so under clause 13 thereof. As to the re-charter of the *Ceres* after respondents' said notice, these respondents leave the libellant to its proofs. And further answering, these respondents deny that any sum whatever is due the libellant in respect to an alleged loss by said re-charter.

FIFTH.—The respondents deny all the allegations of article sixth of the libel, save as hereinafter admitted.

SIXTH.—Further answering, these respondents allege 89
that the *Ceres*, in January, 1892, was in need of the usual thorough overhauling for fruit steamers, as in December previous she had only been on dry dock for painting and had slight repairs. In Mobile there were several reputable shipwrights, with facilities and appliances suitable for overhauling the boilers and machinery of the *Ceres*, but that notwithstanding, the libellant did nothing to repair the boilers, and denied the right of the respondents to lay up the steamship for that purpose. 90

SEVENTH.—By reason of the libellant's neglect to overhaul the boilers and machinery, they became damaged and defective (although the respondents were not then aware of their real condition) until the boilers and furnaces were collapsed and rendered leaky and unsafe, to the respondents' damage, as is stated in the original libel filed by them in this Court, and as further appears from the proofs taken, and to be taken in said cause. 91

All and singular the foregoing are true.

Wherefore, the respondents pray that the libel herein may be dismissed with costs.

C. T. WESSELS.

Sworn to before me by said Wessels, this 18th day of February, 1893.

JAMES FORRESTER,
[SEAL.] Notary Public,
Kings Co.

Cert. N. Y. Co. 92

WING, SHOUDY & PUTNAM,
Proctors for Respondents.

[Endorsed:]—Answer.—Filed Feb'y 20, 1893.

93

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

The Str. CERES, her engines, etc.

vs.

The "SYDSVENSKA ANGFARTYGS AKTIEBOLAG," of Malmo, Sweden.

94

The "SYDSVENSKA ANGFARTYGS AKTIEBOLAGET"

vs.

WESSELS *et al.*

Before Judge Addison Brown.

NEW YORK, November 15, 1893.

95 Present—Messrs. WING, SHOUDY & PUTNAM (Mr. Putnam) for the Libellants.

Messrs. CONVERS & KIRLIN, (Mr. Kirlin) for the Claimants.

Mr. Putnam states the facts of the libel.

Mr. Kirlin states the facts of the answer.

Mr. Kirlin states the facts of the cross libel.

Mr. Putnam states the facts of the answer.

The third article of the cross libel is amended by
96 striking out the five words "and there were no facilities."

Under stipulation between counsel the cross libel is further amended by striking out the 6th article.

Mr. Putnam offers in evidence the depositions of J. E. Connolly, John C. Curran, Jr., Benjamin C. Barroll, and Norman William Mowbray.

Mr. Putnam also offers in evidence the stipulation made March 25, 1892, and the papers annexed to it, being a bill from the Berwind

White Co.; a letter from the Berwind White Co.; also a communication from the Pocahontas Coal Co.; also a contract between Messrs. Wessels & Co. and the Pocahontas Coal Co. 97

Mr. Putnam also offers in evidence the charter party which is marked Exhibit 1.

The stipulation is marked Ex. B.

Norman William Mowbray, being duly sworn and examined as a witness for Wessels *et al.*: 98

By Mr. Putnam:

Q. You are now quartermaster of the steamship *Newport* of the Pacific Mail Steamship line? A. Yes.

Q. And you expect to go to sea on her? A. Tomorrow.

Q. How long have you been quartermaster on her this last time? A. Five months to a day.

Q. You joined her at what time? A. The 8th of June. 99

Q. Prior to that time were you on the fruit steamer *Ceres*? A. Yes, sir.

Q. What voyages did you make on the *Ceres*? A. We left New York on the 26th of March; went from New York to Colon and United States of Colombia.

Q. About when did you get back from that voyage—some time in April? A. Some time along the last of April; I don't remember the date.

Q. You sailed again in April and got back in May? A. Yes, sir. 100

Q. Those two voyages on the *Ceres*, in what capacity did you go? A. As supercargo.

Q. Employed by Messrs. Wessels & Company? A. Yes, sir.

Q. What were your duties as supercargo? A. To see to the loading of the fruit and see that it was properly taken care of aboard the ship.

Q. Before this trip on the *Ceres* what experience had you had in fruit vessels? A. For six months before that I was employed for Wessels, first as second mate

101 in the steamship *Jamaica*, she was in the fruit trade, too; and afterwards I was down in Guatemala handling fruit for them, loading their steamers, selecting bananas, etc.

Q. Before you were in the fruit business had you followed the sea? A. Yes, for 12 or 13 years.

Q. In what trades? A. For the last six years I have been in steamers; before that I was in sailing vessels.

Q. And those six years you were in what line? A.
102 The Pacific Mail and Ocean Steamship Company of Savannah, the Atlas Steamship Company and the United States & Brazil.

Q. Up to what grade had you served as an officer? A. Second officer in the Savannah steamships; in the Ocean Steamship Company I was second officer in the *Nacoochee*.

Q. Were you on the *Ceres* when she took in cargo on that voyage in March and April? A. Yes, sir.

Q. And also when she took in cargo on her voyage
103 in April and May? A. Yes, sir.

Q. Did you notice the condition of the awnings that were used over the hatches? A. I did; I took particular notice of them.

Q. What was the condition of the awnings? A. They were poor; they let in rain, and on one hatch they were not large enough to cover the hatch; they allowed the sun to shine in on the fruit.

Q, What is the effect of letting rain in on bananas in the hold of a ship? A. If the rain or any water
104 gets on them and afterwards they get heated, they get soggy and soft.

Q. Is it apt to cause them to decay? A. Yes, sir? it will cause them to ripen; salt water will blacken them.

Q. What will fresh water do? A. Fresh water doesn't blacken them so much; it merely tends to make them sweat and ripen them more rapidly.

Q. Did you make any complaint about these awnings over the hatches? A. I merely called the mate's attention to them on the first voyage. On the second

voyage when Mr. Wessels was there I called his atten- 105
tion to them.

Q. Did they do anything to remedy the awning? A. Nothing.

Q. Did you have any talk with the engineer on the first voyage about the speed of the steamer? A. I did. I told him she was making poor time.

Q. What answer did he make to that complaint? A. He said that he had been in her when she had made much better time than that, but that the boilers were in better condition then; that at that time, the 106
present time he was speaking, they couldn't drive her on account of the condition of the boilers.

Q. Which voyage was that, the first or second one, that you had that talk? A. It was the last voyage, the second voyage.

Q. Did you notice the condition of the bananas when you arrived here in New York on the last voyage? A. Yes, I was aboard the ship looking after the discharge of them and tallied a good part of them out myself. 107

Q. What was the condition of the bananas as they were tallied out on the last voyage? A. They were ripe. I think probably 3/4 of them were what you would call ripe.

Q. What should be the condition of bananas here to be marketable when they arrive? A. They must be green. Ripe fruit doesn't bring anything like the price that green fruit does.

Q. In your judgment, if the steamer had arrived two or three days earlier, what would have been the 108
condition of the fruit; speaking now of the last voyage? A. It would have been very much better.

Q. What was the condition of the bananas when they were tallied out on the April trip; the one before the last? A. Fully as bad as the last voyage.

Q. Did you tally out the bananas on the April voyage? A. I didn't tally them, but I was there while they were being discharged.

Q. And saw them as they came out of the ship? A. Saw them as they came out of the ship.

109 Q. You are not familiar yourself with the market prices of bananas in New York? A. No.

Cross-Examined by Mr. Convers:

Q. How old are you? A. I will be 29 the 10th day of next May.

Q. Was there more than one awning aboard this vessel? A. There were three.

Q. Where were they used? A. Over the hatches.

Q. Were they all of the same size? A. No, they
110 were different sizes. The forward hatch was the smallest and the No. 3 hatch was the largest.

Q. What was the other? A. The other was a medium sized hatch.

Q. Between the two? A. Yes.

Q. Were all the awnings the same size? A. No, the awnings were of different sizes.

Q. The largest one had the largest hatch, and so on down to the smallest? A. Yes.

Q. How were these awnings placed over the hatches?
111 A. There was a fore-and-aft wooden storm back, as we call it, fore-and-aft beam or scantling, and the awnings were stretched over those, and the sides of them were hauled out to ridge ropes along the sides or rails of the vessel.

Q. Were those awnings rigged up temporarily, or did they remain rigged after the vessel had been loaded? A. As soon as the fruit was in the awnings were set.

Q. Were they kept set, weather permitting, until
112 the vessel arrived in port? A. Yes, except at night. In fine weather when there was no danger of rain they were furled for the sake of ventilation.

Q. Were the awnings for the purpose of protecting the cargo in the hold beneath? A. Yes, sir, for the purpose of keeping the sun and the rain from the bananas.

Q. Did you notice the difference in the apparent construction of these three awnings? A. The one on No. 3 hatch—the after-end of it had been rounded to fit some other part of that ship or some other ship. It

looked as if it had been made to fit the stern of a round 113
stern vessel.

Q. Did you notice any other difference between the awnings with regard to their construction except that? A. No, sir; except that they were light and that they wouldn't shed rain; they wouldn't shed water and water came through them. Usually an awning when you drain it, when you slant it, the water will run off; but these the water ran through when they were almost up and down.

Q. Were they all alike as to thickness and as to 114
weight? A. I couldn't say positively; but they all had that same fault of not shedding water. There might have been a difference of a number or two in the canvas. Canvas goes by numbers.

Q. Did they all appear to be of the same age? A. No, probably the largest one was a little bit the newest.

Q. With that exception did they appear alike? A. With regard to age, to the best of my recollection, yes.

Q. Have you ever purchased canvas, and are you 115
familiar with the different qualities and weights? A. No, not more than a seaman usually is. I sew it and such things. I think I could tell, though, if I were given pieces of canvas of different numbers, what the number was.

Q. When was your attention first attracted to the apparent condition of the awnings which you say prevented them from shedding rain? A. The first day we left Aspinwall, on the first voyage, the first or second day, I am not positive which, she was shipping a 116
good bit of spray, and I went and hauled the forward awning down around the fore part of the hatch to keep that out. I noticed then as the spray came in it didn't run off, it came through.

Q. Don't you think that salt water or spray will go through any ordinary canvas used for awnings; I don't refer to very heavy canvas, such as is used for sails? A. No; No. 6 canvas is what we usually use for awnings and weather cloths.

Q. Wasn't it part of your duty as supercargo to see

117 that the vessel had proper awning? A. No, I don't think that could be considered part of my duty.

Q. Why was it that they attracted your attention? A. My place is to see that the cargo got the best possible care. It was a part of my duty to make the best use of the means provided, but I wasn't told to—I had no orders to see that the ship was properly fitted, if that is what you mean.

Q. Was it a part of your duty to report to your employer any insufficiency of equipment of the vessel?
118 A. I should say that it was a part of my duty, yes.

Q. And on your return from every voyage did you make a report to your principals? A. I did.

Q. Was it in writing or verbal? A. Verbal.

Q. When you arrived at New York on this first voyage did you have any conversation with your employers with respect to these awnings? A. Yes.

Q. With which one? A. Mr. Henry Wessels.

Q. Where? A. Right on the dock. He asked me how the fruit was, and I merely told him that it was
119 in as good shape as good care could bring it; but that it had got wet and sweated, and was pretty ripe.

Q. You say you saw the water coming through these awnings, did you? A. Yes, sir.

Q. How soon after they were put up on this first voyage? A. Probably twenty-four hours after we left port. The awnings, of course, were put up as soon as we got outside. We left there of an evening, and the fore awnings were put up immediately on account of the likelihood of taking spray over. The other awn-
120 ings we didn't put up until the next day; as soon as the men turned to in the morning—had the men to help.

Q. Did you see the awnings wet with the spray shortly after they were put up? A. Yes.

Q. Was this at the forward hatch or middle or after? A. The forward hatch.

Q. Was that before the awnings were put up at the other hatches? A. I won't say positively.

Q. Did you speak to any one on the ship with respect to the water coming through this first awning

that was put up? A. Yes, I spoke to the mate about it, and he said that that was the awning they had always used there. 121

Q. Had the vessel made any other voyages for Wessels before that? A. Yes, she made a number. I don't know how many.

Q. Was it possible, by closing the hatches temporarily while the spray or rain was coming on board, to have protected the cargo from being wet? A. That could have been done; the water could have been kept out of the hatches by putting the hatches on and putting tarpaulins over them; but that would probably have damaged the fruit as much by keeping the ventilation out, by increasing the temperature. 122

Q. At all events, that was not actually tried on this voyage or on the other voyage either, was it? A. That was not done, no.

Q. You preferred taking the chances of wetting the fruit to closing the hatches; was that it? A. Yes, sir.

Q. No matter how short a time they might be closed? A. No, that wouldn't do. If I thought that by putting the hatches on for five or ten minutes, or even for a quarter of an hour, I could keep the fruit dry, I would do it sooner than get it wet. 123

Q. How long continuously did you see the water coming through this canvas? A. Sometimes for a whole watch, for four hours; once for half a day the spray was coming over. Not a continuous cloud of spray, understand; but say every ninth or tenth sea would send a shower of spray over. Of course, it would be impossible to take off and put on the hatch every spray. It would take probably five or six minutes to get the hatches on. 124

Q. Did you notice this same alleged defect in the equipment on the second voyage? A. Yes.

Q. Had there been any change in the awnings? A. No, no change.

Q. Did you notice the rain coming through them on that second voyage? A. Yes.

Q. Did you have any conversation with any one on board with regard to that? A. The second voyage,

125 yes; I told the mate that we had that same small awning for No. 3 hatch.

Q. The conversation with the mate was substantially the same on the second voyoge as it was on the first, was it? A. Yes, I merely called his attention to the fact that the same trouble was likely to occur when the awnings were put up.

Q. Did he make the same reply? A. Yes, substantially the same reply. My position there, you know, is the representative of Wessels, and they rather re-
126 sented anything on my part that might seem like interference with their part of the business. So I had as little to say to any of them as possible.

Q. You don't mean to say you were deterred from saying anything that your position called for? A. Oh, no, not at all. I said all that I thought was necessary.

Q. Was that the only fault you found with the equipment of the *Ceres* to any of her officers on the first voyage? A. I believe that is all, yes.

127 Q. How about the next voyage; is it equally true with regard to that? A. Yes, sir.

Q. Do you recollect the size of that particular awning which you say was, in your opinion, too small for the No. 3 hatch? A. No, I never knew the dimensions of it in feet or inches. I merely noticed that it wasn't as large as the hatch.

Q. Was it too short or not wide enough? A. Too short fore and aft ways.

Q. Do you know the date the vessel sailed for New
128 York with her cargo on board on the second voyage? A. I think it was the 9th of May.

Q. Do you recollect the character of the weather on the voyage? A. We had a fine passage.

Q. Do you recollect the date you arrived at New York? A. No, after this lapse of time I don't think I could tell.

Q. What was a fair average passage from port to port for a small boat like the *Ceres*. How many days? A. Six and a half or seven, probably, would be about the average.

Q. It might be longer if she met very heavy 129
weather? A. Oh, yes; heavy weather would probably make a difference.

Q. Did you have anything to do with selecting these bananas for this second voyage which you say arrived too ripe? A. Yes, I selected a good part of them as they came in. Those that seemed unfit we rejected.

Q. You are not able to state that the second voyage was any longer as an average voyage, are you? A. I should say it was longer than an average voyage, yes. 130

Q. If you don't recollect the length of the voyage, how are you able to state that it was longer than an average voyage? A. We were over eight days on the passage coming up.

Q. You are sure of that? A. Yes, I am positive of that.

Q. On your cross-examination have you stated all that took place between you and any one of the officers on board the *Ceres* on both of these voyages? A. No, the captain and I had several conversations about the 131
condition the cargo would be apt to be in if she didn't make any better time; we frequently spoke of that. I would say to him for instance——

Q. Do you recollect that you did? A. Oh, yes; I can't give the days or dates, nor the exact words, of course.

Q. Was that at the earlier or later stage of the voyage? A. Probably in the later stages of the voyage.

Q. Have you now stated all that took place between you and any one of the officers or anyone aboard the 132
steamer, on your cross-examination, respecting her equipment or speed? A. I don't think that you asked me anything about what the engineer and I said.

Q. What did you say to the engineer? A. I told the engineer that she was making slow time. I don't know who started the conversation, whether he or I did, but however we agreed between us that she was making poor time, and he said that he had known her to make much better time when she had been in other

133 trades, but that now they couldn't drive her as they could then, because her boilers wouldn't stand it.

Q. Do you know what the pressure of steam was on her boilers during that voyage? A. No.

Q. Do you know anything about the revolutions that she was making? A. No.

Q. Do you know the number of knots per hour she was averaging? A. I don't think she ever averaged more than ten and a half for twenty-four hours.

Q. Why do you say that? A. I kept a sort of a
134 run of the time. I had a sort of an idea at the time what she was making. I had the distances between the different land marks and I had her time from one to the other.

Q. Did you figure up and make an entry at the time of her speed? A. Only just on scraps of paper.

Q. Keep any record of it? A. None, no; not of the number of miles she made at the time. I noted down in a little blank book that I found in the state-room that I occupied the different times of arriving or
135 passing different places.

Q. Won't you produce that blank book? A. I guess I could. My impression is that I gave it to Mr. Wessels. I am not sure that I gave it to him. I know he asked me if I hadn't kept any record and I told him I had, and I remember bringing the book into his office.

Counsel for the *Cerro* requests the production of the book as the condition of the admissibility of the witness' testimony.

136

Q If it is in your possession you will give it to the proctors of Mr. Wessels for the purpose of being produced, will you? A. Oh, certainly.

Q. And if you don't give it to them it will be because you have given it to Mr. Wessels? A. My things knock around a good deal, and it is possible that I might not have given that to—no it isn't either; if I haven't given it to him I can find it.

Q. Aud if you don't find it and give it to Mr. Putnam it will be because you have already given it to

Mr. Wessels? A. These entries that I made were only 137
on the first voyage, they only related to the first voyage. I like to keep an account of different times I get to the different places when I am writing letters, etc.

Q. Kid you keep any record of the occurrences of the second voyage? A. No, I figured on getting an account of all that from Mr. Clays, a passenger that we had. He kept a regular log, but he was no sailor, and of course it was just such a log as any passenger would keep.

138

Re-Direct by Mr. Putnam:

Q. When you were on that vessel you didn't yourself go into the engine-room at all, did you? A. No, I never was in the engine-room.

Q. How long is it since you have seen this memorandum book that you had on this first voyage; since you remember to have seen it? A. The last I remember having seen it was some time around the first of June.

Q. Have you seen it since you have been on the 139
steamer that you are on now, the *Newport*. A. No, not that I know of.

Q. You have a residence ashore, have you not? A. Yes, my folks live in Allendale, New Jersey.

Q. Shall you go home before you go to sea to-morrow? A. I calculate to go home to-night.

Q. Will you kindly make a search for the book if you have it at home, and either send it to me or to Messrs. Wessels & Company? A. Yes, sir.

140

J. E. Connolly, being duly sworn and examined as a witness for Wessels *et al.*, testifies:

By Mr. Putnam:

Q. You are in the employ of what firm? A. I represent Castner & Curran, the shipper, in Hoboken.

Q. Whereabouts in Hoboken are they located? A. Foot of 7th street, Hoboken.

141 Q. In what business are Castner & Curran now engaged? A. Coal business.

Q. How long have they been in the coal business? A. I think about one of the oldest firms there is in New York.

Q. What coal do they deal in? A. Pocahontas coal.

Q. They have dealt in that coal for some time, have they not? A. Yes, sir; they are the original ones that brought it here to New York harbor.

Q. Your duties with that firm are attending to the
142 delivery of the coal to different vessels here in port? A. Sending out coal, seeing it is all sent out when it is ordered to be sent out; discharging all vessels, and such as that.

Q. Did you receive orders for Pocahontas coal from Wessels & Company for the steamship *Ceres?* A. That is according to the bills that were billed them, we shipped nothing else but Pocahontas coal.

Q. That is the only coal you ship? A. That is the only coal that I ship.

143 Q. And you remember delivering that coal to the steamers of Wessels & Company? A. I remember delivering it on the orders from the New York office. They gave me the orders from the New York office.

Q. The New York office at Broadway? A. Yes, sir.

Q. Then you deliver it to the steamers? A. I send it out according to the orders that I receive from New York to the destination.

Q. You didn't have anything to do yourself with making out the bills? A. I have a bookkeeper for
144 that.

Q. That is done by him? A. Yes, sir.

Q. Are the bills made out under your direction? A. They are made out by the directions from the New York office to me, and through me to my bookkeeper.

Q. Do you remember the quality of coal that you delivered to the steamship *Ceres* between the 18th of July, 1891, and the 26th of March, 1892? A. We have only one kind of coal, Pocahontas coal.

Q. And you delivered the same that you do to other

vessels? A. Just the same as that we send out to any 145
other vessel that is called upon for us to deliver it.

Q. Do you remember whether any request was made of you to deliver large lumps of coal? A. That was a distinct order that was always given to me by the New York house; that Wessels & Company would kick against any coal that was any way fine; that I should always look and see that he always got rough coal, because he would kick unless it was as rough as I could get for him.

Q. By rough, you mean large lumps? A. That is 146
the general coal as it comes, going to look at it as it is loaded; not to send any fine coal if I possibly could avoid it.

Q. Did you endeavor to send large pieces? A. Always as rough as I could get it.

Q. What were some of the other steamship lines that you were supplying with Pocahontas coal at that time? A. We were supplying the Cunard, the White Star, the Standard Oil Company's oil ships, the Dutch ships running to the West Indies, and supplying Kerr & 147
Company.

Q. Those are fruit steamers? A. Fruit steamers running in opposition to Mr. Wessels at the time, and doing it now. And we are coaling them now at present right over in Brooklyn.

Q. You also coal harbor vessels, do you not? A. Yes, sir, we have the general trade of all the deep sea-going towing vessels that is on this coast.

Q. That is, towing between here and New England? A. Towing all on the American coast. We have 148
Morse & Company and all those big concerns that do all this deep sea towing on the Atlantic coast; we have two-thirds of them. If I had my books here I could name you seventy-five of them, different concerns.

Q. Did you supply coal during the last year to the *Teutonic* and *Majestic*? A. We are supplying them, and supplied them the last trip.

Q. And that you have done for some time? A. Yes, sir, the last one I think was the *Majestic*; we put coal into her.

149 Q. And you have done it for some time? A. Yes, sir, we have done it.

Q. Do you remember whether you supplied the *Etruria* last December? A. Yes, sir, we put coal aboard the *Etruria* when she was making that race against the *Paris* to New York.

Q. That was just before Christmas? A. The *Paris* was to arrive the day before Christmas, but she didn't arrive till Christmas. We beat her five hours on the *Etruria*, a single-screw vessel, and the other being a
150 twin-screw.

Q. Was that the first time you coaled the *Etruria*? A. I think it was, but I am not positive. But we coaled some of the other ships of the same line.

Q. Where does your Pocahontas coal come from? A. It is shipped to a place called Lambert's Point, Virginia.

Q. Norfolk? A. Norfolk proper.

Q. And is brought here? A. Is brought here in vessels; in barges, they are generally called.

151 Q. Do you know whether the coal is also supplied to railroads? A. Yes, sir, it is supplied to mostly all the New England system of railroads there is. Mr. Curran will give you the names of the different railroads.

Q. You don't have charge of that branch of the business? A. No, sir, I do not. That is done in the other house.

Cross-Examined by Mr. Convers:

Q. Do you know when this coal was mined that was
152 furnished to the *Ceres*? A. No, sir, I cannot give you data for that. I am not supposed to go into the other branch of the house at all. I only have my own branch.

Q. When was the first coal that you furnished the *Ceres* that you have personal knowledge of? A. I can't give you personal knowledge unless I return right to my books, and then I could give you my data. I find the first boat that went there was the *Cascade*.

Q. Have you before you a list that will enable you

to state the exact dates when all the coal was furnished 153
to the *Ceres* by your firm? A. Yes, Sir.

Q. Please state the dates on the books and the quantity? A. July 18, boat *Cascade*, *Ceres*, 27 tons. That was a balance of a boat; the preceding part of the cargo had gone into the steamer *America*. She had taken 225 tons, leaving a balance in the boat which had been put into the *Ceres*, which if I am not mistaken belonged to the same line. July 18, 1891, the *Tyler*, 141 tons.

Q. I simply ask you the dates when you furnished 154
any coal to the *Ceres*, the names of your vessels that delivered the coal, and the quantity? A. August 3, 1891, boat *Willie Guest*, 20 tons; same date, boat *W. G. C. Wood*, 290 tons. September 10, 1891, boat *C. D. Chase*, 42 tons; same date, boat *Bluefield*, 300 tons. October 2, 1891, boat *B. McWilliams*, 259 tons. October 28, 1891, boat *Horton*, 186 tons; same date, boat *Salem*, 176 tons. March 26, 1892, boat *Salem*, 380 tons.

Q. Is that all the coal that was furnished at any time 155
by your company to the *Ceres*? A. That is according to what our bills state.

Q. Do you know yourself whether that is all the coal? A. Not unless I refer to my books.

Q. Haven't you looked up your books so you can testify on this examination? A. I am taking it for granted what our New York office say is correct.

Q. I am asking what you know of your own personal knowledge. You have attempted to state that certain coal was sent to the *Ceres*. Now, I ask you, if that is 156
all the coal that was sent by them to the *Ceres*? A. That is all the coal I know of.

Q. Wouldn't it be your duty to know of all the coal that was sent to her? A. It would be my duty, but if I would be away from there the coal would be sent direct without me being there.

Q. Wouldn't it be reported to your department and some entry or memorandum made of it, so when you returned you would know of the fact? A. Our people at New York would be at leisure to do that if they

157 wanted to, if they thought fit, without my being there.

Q. Then you don't know whether the coal that you have stated is all the coal that was delivered by your firm to the steamship *Ceres?* A. I don't know how long that coal is running. What I would say is simply that those bills refer to what coal is there. I would have to refer to our New York house to find if there is any more been shipped to that steamship since, because my business is so great I cannot without data tell it exact.

Q. Haven't you examined the books for the purpose
158 of stating on this examination how much coal had been furnished by your company to the steamship *Ceres?* A. I have not examined the books in New York. The books are kept direct from the New York office. We ship them according to order.

Q. Have you stated all the coal that you received orders from your company to put on board the steamship *Ceres?* A. I have stated all, according to our statement from the New York office.

Q. Have you examined the statements contained in
159 the New York office? A. I have a copy of them here that I just repeated to you.

Mr. Putnam: I will state that this is all the Pocahontas coal Wessels & Company have ever paid for for the steamship *Ceres*.

Q. Do you know whether your firm furnished all the coal that was used by the *Ceres* while she was running under the Wessels charter? A. I do not.

Q. Was the coal that was delivered to the steamship *Ceres* by your firm delivered direct from boats which
160 brought it from Norfolk or was it taken from yards or warehouses in the port of New York? A. The vessels that come direct from Norfolk are consigned to our firm at Hoboken. I will discharge those vessels into lighters and from the said lighters it is discharged into the steamer.

Q. Does any of it go into your yard? Does any of it go on shore? A. Not ashore. We put everything afloat unless what we put into our coal pockets for the use of the steamers coaling, all this coastwise trade, all those big ocean towing vessels, and everything.

Q. Do you have entire charge of the coal that is 161
furnished from the Hoboken place of business of your company? A. I have charge of seeing that it is delivered.

Q. As matter of fact, have you personally ever seen any of this coal? A. Sent to the steamers?

Q. Sent to the steamship *Ceres?* A. I couldn't say I have seen it sent personally. I don't, of course, go aboard the tugboats and see that she delivers it alongside, or see that the men discharge it and put it in, because I have nothing to do with that part of seeing it 162
put into the steamer. Your question is, have I seen it put into the steamer? Now the steamer is in New York and I am at Hoboken.

Q. Will you swear that you have seen all the coal before it was sent to the steamship *Ceres?* A. I will answer that in this way: all this Pocahontas coal that has been sent to this steamer we speak of I have discharged at Hoboken or it has been discharged out of our vessels in the harbor of New York, I will say into lighters, and delivered there. We deal in nothing 163
there; I have nothing to send out, nothing but Pocahontas coal.

Mr. Putnam: The question is whether you see the coal.

The Witness: There are two ways of explaining that. The coal is discharged. I have seen the coal; I know the coal is the Pocahontas coal; we have nothing to send out but that there. I see the coal every day when I go aboard the vessel, but I may not see the certain part of the coal that is on the bottom 164
of the vessel when the vessel would be full.

Q. Did you inspect all the coal before it was sent aboard the steamship *Ceres* and did you personally see it? A. Not interrupting you, please repeat the question. Do you mean all the coal, or the coal that is in the vessel or the boat?

Mr. Putnam: He means all the coal that you have testified to in these ten different boats.

The Witness: I have seen the coal as it comes in.

165 You mean the cargo as a general run, see the boat as it goes out?

Q. (Repeated.) Did you inspect all the coal before it was sent aboard the steamship *Ceres* and did you personally see it? A. That I cannot answer direct, if I seen it personally. I can't say that I seen the whole of it, because I might have been in New York, or might have been over in this place, for that matter, when it was ordered out. I couldn't say I seen it all personally.

166 Q. Wasn't nearly all of it shipped aboard lighters in the stream and sent from there direct to the *Ceres*? A, At the docks; not in the stream, sir.

Q. Did you receive any written instructions from your employers respecting the quality of the coal which Wessels required? A. I have always got verbal instructions, that is, over the wire; told personally to me always over the wire, to see that Wessels got as lumpy a coal as I could get to them, because he was always known to be a great kicker unless he got it.

167 Q. The Cunard Line and the White Star Line and the coal furnished to the companies that had the ocean racers—they weren't as likely to kick as Wessels; do you understand that to be the fact? A. Yes. They knew the coal by reputation, and knew what they would get.

Q. They knew the reputation of the coal then better than Wessels & Company did? A. I think not; they knew it about the same.

Q. As matter of fact, the coal that you furnished
168 the *Ceres*, so far as you know, was the average Pocahontas coal, wasn't it? A. It was the regular average Pocahontas coal that was consigned to Hoboken that I had discharged into lighters and sent out to them, the same as I would send out to all other steamers that are going out.

Q. You don't pretend to say that you picked out special coal for Wessels for the *Ceres*? A. For the *Ceres* we took the average lump; but always as a rule tried to please him if we could; if we could get it

lumpier than the average run of coal—some coal when 169
it drops will break a little more than others.

Q. As a matter of fact there is a choice in Pocahontas coal? A. No, there is no choice; it is all one; one may look lumpier than the other.

Q. As matter of fact, is there any difference in the steam producing power of the different grades of Pocahontas coal? A. It is all Pocahontas coal.

Q. Is it all one grade? A. All one average run of grade that I know; it is all Pocahontas coal. We take it as it comes. 170

Q. I ask you whether there is more than one grade of Pocahontas coal? A. No, sir; not as I know. It is an average; one cargo may look lumpier than the other.

Q. As matter of fact there is no substantial difference? A. Not that I know of. It may look a little lumpier.

Q. Have you ever had experience with any other coal than the Pocahontas coal? A. Yes, sir, I have; I have used it myself; almost all the different grades 171
of coal there is, I think.

Q. With what other grades of coal have you had experience? A. I have had it with Cumberland. That is very good coal people will tell you.

Q. Is that all? A. I have used anthracite coal. I have had experience practically in Cumberland coal, both in the using and firing of it.

Q. In your judgment what would be the difference in the steam producing power of the Cumberland coal as compared with the average Pocohontas coal? A. 172
Pocahontas would exceed it considerable.

Q. Have you ever used any Pocahontas coal except in a grate? Have you ever had any experience in using Pocahontas except in a grate? A. I have seen it both burned—do you mean in a stove grate or a grate in a boiler?

Mr. Putnam: The grate part he excepts out.

The Witness: Outside of a grate I don't think it is used.

173 Q. Have you ever used it yourself in any way except as fuel in a house? A. I never used it in a house sir, but I have seen it used on the stoves in the boats there.

Q. Have you ever had any personal experience in using it to make steam? A. Yes, sir; plenty.

Q. Are you familiar with the coal furnished by the Berwind-White Coal Company? A. Yes, sir, I am. I have seen that coal; I know of it.

Q. How would you characterize it, its quality as
174 compared with the average Pocahontas coal? A. I would prefer Pocahontas to it.

Q. You mean by that you think the Pocohontas better? A. Yes, sir.

Re-direct by Mr. Putnam:

Q. What experience do you have with actual firing of furnaces with coals at the present time? A. As a rule I go among the boilers on our dock regularly right along.

175 Q. How many boilers and furnaces do you have on your dock? A. We have four.

Q. You make steam there? A. I have made steam by it and use it on those boilers on this dock.

Q. Before that have you had experience in firing of furnaces with coal in your life? A. Yes, sir; I have used boilers before, used Cumberland coal.

Q. Is it a fact that Pocahontas coal is used in a house in a grate for warming of rooms at all? A. I have seen it used and I can refer you to the party that
176 has used it.

Q. That is very unusual, isn't it? A. It is very unusual, but I have seen it used.

Q. That isn't the main use of that kind of coal? A. No, sir; it is only used as a novelty.

Q. You testified to some of these shipments on these boats which are small lots; for instance, the second shipment by the *Willie Guest*, of 20 tons; can you state where the rest of the coal in that boat went, that is to what steamer? A. All of this coal, of course,

didn't go into that steamer. These are the boats that 177
were consigned there.

Q. You haue given the tons that went into the *Ceres?* A No, sir; I have given the tons of the boats that were consigned there.

Q. The boats had more coal than what the *Ceres* took; is that what you mean? A. Yes, sir; Mr. Curran can explain that.

Q. During the time that this coal was being delivered to the *Ceres* you were sometimes at Hoboken, but sometimes you would be away, isn't that so? A. Yes, 178
sir.

Q. You wouldn't be there every hour of the day? A. No, sir, I would not.

Q. Who was in charge when you were absent? A. Our bookkeeper had charge of the shipping department when I was away.

Q. Most of the time every day you are there, aren't you? A. Most of the time.

Q. And you were last year? A. Yes, I have been there for several years. 179

By Mr. Convers:

Q. Do you know anything about the coal furnished by the Export Coal Company at Pensacola? A. I have not used that coal, sir. That is a new line of coal here —I don't think it is brought up here.

Q. You have no knowledge of it? A. I have heard tell of it.

Q. But that is all; you have had no personal experience of it? A. The coal that is shipped from Pen- 180
sacola—I have had no experience down there.

181

JOHN C. CURRAN, JR., being sworn and examined as a witness for Wessels *et al*, testified :

By Mr. Putnam :

Q. You are a member of the firm of Castner & Curran ? A. No, the firm are Philadelphians Mr. Castner is my cousin, and Curran is my brother. I am the party in New York who arranges all the contracts and makes all the sales for them. We are a
182 branch house in New York. Philadelphia is the main house.

Q. And you have branches also in Boston and Norfolk ? A. Yes, sir.

Q. Your New York house is at No. 1 Broadway ? A. Yes.

Q. And your point of shipment and delivery for this port is at Hoboken ? A. Yes, sir.

Q. What pier or slip ? A. They call it foot of Seventh street, Hoboken.

183 Q. This coal that Castner & Curran deal in is what kind of coal ? A. It is semi-bituminous coal ; soft coal is the general term of it.

Q. It is called bituminous coal ? A. Bituminous coal.

Q. How long has that coal been in this market ? A. We brought it here, to the best of my recollection, in 1885. Then we took it out of the market for about a year and a half to two years, because the prices were very much cut and low at that time, and we were
184 starting the shipment of coal for the tide-water. Then we brought the coal back in 1887, just as near as I can recollect, without going over our books, and we have kept it in the market ever since that time here.

Q. Did you have personal charge of the contracts for sale of the coal in the East here ? A. In New York. The East is under our Boston house.

Q. What steamships are you now coaling with Pocahontas coal ; what lines ? A. We coal the White Star ; we coal some of the Cunard steamers ; Kerr & Company, who used to be Wessels & Company ; the

Dutch West India line; we coal tramp steamers coming 185
in from time to time. We used to coal at times Munson's steamers, and we coaled at times—these are not regular contracts you understand—but when they call for the coal, the Standard Oil Company's steamers.

Q. What towing and harbor business do you have? A. I don't care about giving the list of our customers.

Q. In a general way, how extensive is your business in harbor and towing boats? A. We will run way into 186
hundreds of thousands of tons here, if that is general enough for you.

Q. Have you also furnished your coal to Cramps for trial tests of their cruisers? A. Yes, when the *Baltimore* was built, the Cramps were very anxious to show what was in the steamer, for the reason that there is always, I understand, a stipulation of such an amount of horse power and speed to bring the vessel up to the requirements, and she is subject to rejection if she does not come up to them. So they were very anxious to 187
get the very best coal they possibly could, and they took Pocahontas coal on the *Baltimore* and made all the trials of the firm of Cramp & Sons. Then afterwards there is an official trial always by the Navy Department, who attend to it themselves. And that test was also made on the Pocahontas coal under the supervision of the Navy. The result was so great that they refused at first to accept the showing of the speed and horse power. So a second trial was made which resulted in precisely the same as the other, and the 188
Cramps received a very large bonus from the government on account of her excess of speed and horse power.

Q. Do you know whether it is always used for other boats that the Cramps have built since the *Baltimore*? A. Yes, every vessel, I understand, has been tested by the Cramps on Pocahontas coal since that time.

Q. Can you state whether you have been requested to supply Pocahontas coal here at the Navy Yard from the Navy officials themselves? A. Yes; I judge that

189 came around through the Cramps. Of course, the Navy Department knew of the result of the *Baltimore's* trials, and that brought the Pocahontas coal to their notice prominently, so I went to Commodore Ramsay, who was commandant at the Brooklyn Navy Yard. In fact, he sent for me and I went over there and arranged with him about coaling four of the new cruisers that were then in New York Harbor. They went to Newport to make the trial. There is a government ground, they have a course laid off there
190 where they test. They went there, and the vessels did so well that, although prior to that time the Navy had been using one of the very best brands of soft coal in this country, Secretary Tracy issued an order after those trials, to the commandments throughout the country, that in all manœuvres and trials of United States vessels, Pocahontas coal preferably was to be used. Of course, if they couldn't get Pocahontas, they would take then the next best coal. For instance, we don't send it to San Francisco. There are places
191 where they couldn't get it: but where it could be got Pocahontas coal was to have the preference. That order, I understand, stands to-day.

Q. Do you know whether the practice ship *Bancroft*, which was recently tested here, was tested with your coal? A. Yes. That coal, I understand, was Pocahontas. I didn't myself arrange for that; but I understand she did use Pocahontas coal.

Q. The coal that is supplied here in New York is brought from Norfolk, is it not? A. Yes, sir; by
192 barges.

Q. And by railroad, how does it come to Norfolk? A. It comes down on the Norfolk & Western Road to Norfolk. We call it Lambert's Point or pier; but it is the same thing, it is Norfolk.

Q. The process of delivery here in New York is, orders come to the Broadway office and then they are delivered from Hoboken. Is that so? A. Yes, we have the orders; the accounts and everything are kept in the New York office and the discharging is done at Hoboken. Mr. Connolly is the superintendent of the

dock at Hoboken, and we send him over, either by a 193
messenger or by telephone, orders where to send the boats. The orders come to New York.

Q. The bills are also paid in New York? A. Yes, sir.

Q. Will you look at these bills, I think ten in number, and state if those bills are correct and the amounts stated there were paid by your New York office? A. Yes. Of course I didn't make out those bills. They are all bills made out by our regular party, they are our bills which certify without any question at all, 194
that the coal delivered is Pocahontas coal.

Q. And the bills are stamped "paid" by your office? A. Yes, all the bills I know are paid.

The bills are marked Wessels' Exhibits 1 to 10 respectively.

Q. Is there more than one grade of Pocahontas coal that is sold to steam vessels here? A. We only have one Pocahontas coal, that is all. It is the regular coal as it comes out of the mines, and we do not make 195
lump coal. I don't know exactly what the object of you gentlemen is precisely, but if it is relating to quality I think I can probably give you some little explanation of it. We only have what is called—run of mine—coal, or coal that comes out of the mines, lump and fine coal together. A certain portion of the fine coal is taken at the mines and coked. We have a great many coking ovens, several thousand of them now, and a portion of that fine or slack coal, as it is called, is taken to the coking oven and is there coked. 196
The rest of the coal, lump and fine, is shipped to the tide water at Norfolk, and comes either east or here, as far as this country is concerned. We don't make lump coal, neither do we guarantee any quantity of lumps. At the mines the orders are to ship, as near as possible, about sixty per cent. lump; and they draw as much slack as possible away to get that proportion of lump. But it is a very dry coal and is very friable and grinds up easily, so that when it arrives here or arrives east it is nothing like the proportion of lump as

197 it was when it left the mines. Then it is discharged from the big barges into the boat. All the rehandling of which, of coarse, serves to break the coal, and when the boats are shipped there is nothing like the proportion of lump as was in the cars when they left the mines at Pocahontas. The question of lump has come up often in our business, and we have steadily refused to make it, because to pick out lump out of 10,000 tons of coal would ruin probably 9,000 of it, as far as having as fair proportion of lump in it as we
198 would want to give. Fine coal is good coal. Slack coal is good coal. It can be burned. But a preference always exists for a certain proportion of lump in the run of mine coal, as they think it builds a better fire. But as far as the strength is concerned, it is in both the fine and run of mine coal. The coal that we supply the White Star or any of these steamship lines, is run of mine coal, just the same as we supply to Wessels & Company, or as we supply to our railroads down east or through the country. It is all run of
199 mine coal. Sometimes it may be a little more lumpy than it is at others. The handling may have something to do with it. But it is, as I tell you, a coal that runs fine and lumpy. We won't for the White Star or anybody pick out all lump coal. We won't do it. It wouldn't pay us, and I have made up my mind—the question was asked for the Cuba trade—foreigners use a great deal of English coal, and English coal is lump coal, and when we started our Cuba trade the question was brought up afterwards about making the
200 lump coal. We did make a little when we started business, and we shut down on it and have never made it from that day to this.

Q. Do you know whether your coal is a free burning coal? A. All soft coal is a free burning coal.

Q. Can you state whether your coal is delivered to the New England railroads as well as steam vessels at sea? A. Yes, we have quite a number down east. I would like to state in regard to this coal that was supplied to Wessels & Company that we were always very particular in picking out, as we call it, as good a run of

coal as possible, for the reason that we were aware 201
that in the fruit business it was essential to have the vessels on time, and, therefore, if there was any possible choice as might be thought—although you can't see where the choice can come in in coal hardly—we were always careful to give them just as nice cargoes as we possibly could.

Q. Can you state whether you shipped your coal to Montreal to coal the Allan steamers at any time? A. Yes, sir; we ship it now. We have had the contract for years. 202

Q. Is there any other coal in this market that is used for steamers that is superior to yours in your judgment? A. There is no coal that I know of stands as high in this country as Pocahontas coal.

Q. Is there any coal that is higher priced here? A. No, sir.

Cross-Examined by Mr. Convers:

Q. Is the price of your coal uniform to all customers? A. That is a very difficult question to ask; 203
I can answer that better by saying that there is a price fixed and has been fixed for soft coal, and we are holding firmly on that price.

Q. And all the coal you sell to your different customers brings that uniform price, does it? A. I would not make a sale to-day here for less than the top price of soft coal. We are what they call high priced men, maybe, but the coal is good enough to bring the price. We are not cheap coal.

Q. Was the quality and price of the coal furnished 204
by you to Wessels identical with that furnished at the same time to the White Star and Cunard lines? A. I would prefer not answering any details in our business if I can avoid it. I don't want to refuse to answer your questions, but I want to keep our details just as much to myself as possible.

Question repeated.

Mr. Putnam: State generally how the prices that Wessels paid compared with those lines.

205 If you have a contract for a year with the White Star line you may have terms with them which you don't wish to disclose.

THE WITNESS: I don't exactly know what you are driving at, but I will say that Wessels & Company paid us our regular price for the coal.

Q. Paid you the regular price for the coal that you furnished them? A. Paid us the regular price for our coal. I don't exactly know what you are driving at,
206 but if you mean did we furnish them at a low price for poor coal, I say no, we asked them a price for good coal. We didn't cheapen down the price to give them poor coal.

Q. Was the coal that you furnished them identical in quality with the coal that you were at the same time furnishing to the White Star and Cunard lines? A. It is the same. We only have one coal. There is no other coal that is brought down on the railroad. We only have one kind of coal, Pocahontas
207 coal. There is no mixing of coal or grades. We are in a peculiar position. The Norfolk and Western brings down Pocahontas coal to Norfolk, and that is the only coal they bring down. There is only one Pocahontas coal, and as I told you about the lumps and things of that kind, we do not vary them. We bring down what is called run of mine coal, and the chances are that Wessels & Company would get just as lumpy coal as the White Star would get or the Cunard would get, or any other parties would get, and they were particu-
208 larly likely to get that for the reason that we were always very particular to pick out—when I say nice runs of coal, I mean coal that is nicely—you can't tell how the boat is going to run from the looks on the top, but you can't tell how it runs underneath. We were always very particular to give them nice runs of coal, because we knew they were very particular and we knew the reason for it.

Question repeated. A. I put it that way, that we have only got one grade of coal. We have only got one coal, Pocahontas coal.

Q. Can you answer the question, yes or no? A. I answer the question just as I give it to you. 209

Q. Do you refuse to answer the question, yes or no? A. I refuse to answer it in any other way than that.

Q. Are you acquainted with the coal furnished by the Berwind-White Coal Company of New York? A. I would like to make one amendment to this question, which you asked me about Wessels & Company, and that is, we furnished them with our Pocahontas coal, first-class quality, and that is the quality we guarantee always to everybody. 210

Q. Do you still refuse to answer, yes or no? A. It may seem obstinate in me, but I prefer answering my questions in the way that suits me best.

Q. Was the coal that you furnished Wessels & Company for the *Ceres*, the bills of which have been introduced, identical in quality with the coal that you were at the same time furnishing to the White Star and Cunard line? Will you answer this question, yes or no? A. I will answer that by saying we have only got one quality of coal, and that, first quality of coal, 211 was furnished to Wessels & Company.

Q. Do you refuse to answer the question, yes or no? A. No; I refuse to answer the question, except in my own way.

MR. PUTNAM: Mr. Curran, the question here is——

Mr. Convers states that having the witness in hand he insists upon not being interrupted.

MR. PUTNAM: Mr. Curran, the question here is not what the terms were with the White Star 212 line or what your contract was with them, as that is a private matter, but is as to whether the quality of the coal is the same.

MR. CONVERS: I object to the witness being examined by Mr. Putnam while I am examining him.

MR. PUTNAM: Very well; go on.

By Mr. Convers:

Q. Are you familiar with the Welsh coal? A. From hearsay.

213 Q. You have no personal experience or knowledge of it? A. No, sir.

Q. Are you familiar with the coal offered in the market at Pensacola by the Export Coal Company? A. No; because here we have never had any competition from them. The only way I can judge of a coal. would be by coming in direct contact with it in selling the coal.

Q. And you never have come in contact with the coal sold by this Export Coal Company at Pensacola?
214 A. No; I don't think they bring it up here.

Q. Was the coal furnished by you to the Cramps and to the Navy Department, which excited suspicion as to the correctness of the record of the steamers, identical in quality and size with the coal which you furnished the *Ceres*? A. That I can't tell you; I didn't furnish it. I don't like that word "suspicion." They thought that a mistake must have been made in the test, that it could hardly run so high. About that I cannot tell you; I didn't furnish the Cramps. We are in New
215 York and I have never met the Cramps in my life and the arrangements were all made in Philadelphia; but in New York, when I supplied the steamers, I went over and there was no preparation or anything like that about the coal. They asked me to supply them with coal; I supplied them with coal. They brought up this question which a great many people bring up, about wanting lump coal and all that sort of thing. And to oblige Commodore Ramsay I took the trouble of having our men, at a big expense, go over
216 and try if such a thing was possible, to pick out as big coal as possible—they used very little in amount—it was only a trial test. I went over and watched them pick out this test coal, and they were hopping mad. when they would take the coal it would break, it was dry, and when I got it over there some of them turned around and said: "There is a lot of fine coal in among this coal." We said: "We can do no better." I told Commodore Ramsay afterwards I wouldn't make any lump coal, or pick out any lumps at $10 a ton.

RE-DIRECT by Mr. Putnam : 217

Q. As a matter of fact, you didn't pick out the coal that Commodore Ramsay had to any extent? A. As I said before, we have only one quality, and that is first-class Pocahontas coal. I picked out no quality of coal for Commodore Ramsay, but I tried to pick out as many lumps as we could for this small requirement, but I found it amounted to little because the coal was so dry it would break when they threw it in the boat, it would break, and so when they got the coal a great portion of it was not lumps. They have queer ideas on 218
these men of war. They use hard coal for regular steaming, but for trials they use soft coals; they use English coal, and English coal is lump coal. They get the idea of always wanting lump. The coal that is supplied to any steamers or railroads that we have, without reservation, runs fine and large. Of course, we always try with anybody to get the coal as lumpy as possible. I don't want to dwell on it, but I want to impress you with the fact that the coal that Wessels & 219
Company got was first-class coal, as good coal as I could give them any choice of.

Q. Can you state whether American coal generally, American bituminous coal runs finer and is less lumpy than foreign coal; A. Yes, sir; because I understand that foreign coal, English coal I suppose you refer to, that is the principal coal, is double screened coal, that is, that English coal comes pretty much all lump. The slack of English is different from American; the slack is not worth much in 220
English coal. In American coal I have an analysis made by an Englishman, in which we have no influence whatever, showing just exactly how slack coal compares with lump coal, if you would like to see it, showing that one coal is nearly about the same as the other; that if it is fine it is nearly as strong as if it is in lumps.

Q. So that the difference is not nearly so great as it would be with Welsh or English coal? A. No, sir; those coals are what I understand as lump coal.

221 Q. As I understand you you don't care to pick out entirely lump coal for any steamer? A. We have never done it. At present no, sir, I can't pick out lump. What they would do outside of New York I can't tell you; I am speaking of New York business.

Q. There is only one question, whether you treat the White Star Line—the question Mr. Convers asked you—with respect to the size and quality of the coal, without regard to the price, in the same way that you
222 did Wessels & Company? A. I will say this, that we try to treat all parties exactly alike, and that I gave Wessels & Company our first quality of coal, and as regards the lumps, that we gave them as lumpy coal as we had given anybody. I don't mean to say, gentlemen, that perhaps a boat that goes to the White Star might not, that one boat, have been more lumpy than the boat that Mr. Wessels got that time; but I will say on the other hand that the probabilities are that Mr. Wessels, on the next boat, got a lumpier boat
223 than the White Star or any other steamship company got. We don't think it is a better coal because it is lumpy, but then, everybody, foreign vessels especially, try to get as much lumps as possible, and we try to pick you out as good boats as we can, because we said Mr. Wessels wants it lumpy. I would like to make another point. At Norfolk, where we do our heaviest coaling of steamers, we coal in the neighborhood of about a thousand steamers a year; those steamers are supplied with exactly the same coal as Wessels & Com-
224 pany received, and I don't know to my knowledge, where they ever complained. I have got plenty of testimonials, if you want them, from vessels and from parties, to show you how the coal suited, and all of them are the grade of coal that Wessels & Company received.

By Mr. Convers:

Q. Are you familiar with the grades of coal sold in this market by the Berwind-White Company? A. Yes, that is Clearfield coal.

Q. How does it compare with yours as to quality 225
and as to size? A. Now you touch me in a delicate quarter. We make it a rule never to say anything detrimental to a competitor. In other words, we put ourselves on a plane that we act in the most courteous manner towards everyone, and to say anything against a competitor, to us looks like rather a poor way of doing business, so it is a delicate matter for me to answer that question. But I will say this; our coal, we consider from all that people tell us, stands highest in this country for steam in the soft coals. But we also say 226
that Mr. Berwind's coal is good coal. How all his coal runs I cannot tell you.

By Mr. Putnam:

Q. Do you know where the Berwind-White coal comes from? A. Yes, sir; the mines are in Pennsylvania, and about all his coal—of course it is difficult to tell about another man's business. I would say nothing detrimental to Mr. Berwind under any circumstances, because he is a gentleman and we wish to treat 227
him courteously. We know him very well. His coal is considered good coal. We hold our coal as better than his or other coals, because we consider it really the standard American coal. He has got what I call very fair coal.

Benjamin C. Barroll, Jr., being duly sworn and examined as a witness for Wessels *et al.*, testifies: 228

By Mr. Putnam:

Q. You reside where? A. In Elizabeth, N. J.

Q. Have you been in the coal business here? A. Yes.

Q. How many years? A. Ten in New York.

Q. And in other places? A. Since 1866.

Q. What other places besides New York? A. Baltimore, and we had a house in Georgetown.

Q. Are you also now in the steamship business? A. Munson's Steamship Company.

229 Q. How long have you been with the Munson Steamship Company? A. I was with the Export Coal Company and Munson together since October, 1890.

Q. The Export Coal Company is located where? A. The coal is in Alabama. The Export Coal Company is a Florida corporation.

Q. Does that coal come to New York at all? A. No.

Q. Is it not in this market? A. No.

Q. Do you know whether it comes north of the Gulf
230 ports? A. No; their market is Cuba and the South. Gulf ports.

Q. In the years that you have been in the coal business you have been acquainted with the different grades and qualities of coal that are used for steamships? A. Yes.

Q. You know the reputation and quality of the Pocahontas coal? A. Yes.

Q. Have you used it yourself on vessels? A. The Munson Steamship Company uses it.

231 Q. Which you are connected with? A. Yes.

Q. Will you state whether or not the Pocahontas coal is good American coal and so regarded in this port? A. Yes.

Q. Do you know of any coal in this port that is better than the Pocahontas coal? A. No, I think it stands as high as any.

Q. Do you also know the coal that the Berwind-White Company supply here? A. Yes.

Q. Can you state whether or not that is regarded as
232 good steaming American coal? A. Yes, they are I guess the largest merchants in New York, supplying steamers with coal.

Q. Did you have at one time the coaling of the *Ceres* when she was in Pensacola or some of the Gulf ports. A. She was under time charter to the Export Coal Company, and we supplied her with coal during the time that she was under our control.

Q. That Export Coal Company gave her a cargo and also gave her coal for the bunkers? A. Yes, sir.

Q. That is also good coal, is it not? A. Yes.

Q. Was that vessel loaded by you at Mobile or Pen- 233
sacola? A. My recollection is that at first we took possession of the ship at Mobile and we coaled her there, and afterwards she was coaled at Pensacola; but it was the same coal.

Q. How is the Export coal as to its lumpiness and size of the pieces, compared with the coals here in the New York market? A. That is a very hard question to answer. It is a matter of opinion.

Q. As to the size of the pieces? A. As a rule, from my recollection, what I have seen of the Export 234
Company's coal the lumps run somewhat larger.

Q. Do they have to transport it at all by water in getting it on the vessels, or can it come right by railroad? A. No, it comes direct from the mines to the railroad at Pensacola and is there delivered to the ship.

Q. So there is much less handling than in the coal in New York? A. Yes; it would be in a lumpier state there than it would be delivered at New York in the usual way.

Q. Do you know whether there are any shipwrights 235
in Mobile who have a plant to repair and overhaul steam vessels, and whether there were such in January 1892? A. I know from my own knowledge and the knowledge of the accounts that we have had our tugboats overhauled and repaired there, and our iron barges which carry 1,000 tons; but it is only in a general way. I know that there is a machine shop there, and I know there is a floating dock. What its capacity is I can't say. I know the tugboat has been out on it. 236

Q. How large tugboats do you have there? A. She is about 120 feet long, I think.

Q. Ocean-going tug? A. Yes.

Cross-Examined by Mr. Convers:

Q. You have no personal knowledge of any steamers having been generally overhauled at Mobile as regards their machinery? A. No.

Q. Are you familiar with the different grades of

237 coal furnished by the Berwind-White Company here in New York? A. Yes; their general reputation.

Q. Have you had personal experience by having bought the coals? A. Yes, I have bought it and furnished my own steamers with it when I couldn't get my own coal when I was agent for the Consolidation Coal Company.

Q. What different grades of coal does it have? A. They only pretend to have one coal. I have always understood in a general way that it came from differ-
238 ent mines. They mine a great deal and it comes from different collieries.

Q. Do you know of the different prices that they ask for their different grades of coal, having regard to size instead of quality? A. I don't think there is any difference at all; never heard of it.

Q. You have only personally bought one grade of them, have you? A. That is all; steamer coal; run-of-mine coal.

Q. Have you ever bought any steamer coal of them
239 that was selected so as to be specially free from fine coal and to be a good lumpy coal? A. No.

Q. Have you ever bought more than one grade of coal from the Pocahontas Company, having regard to the sizes of the coal? A. No.

Q. Have you ever made any complaint as to the quantity of screenings or of fine coal in any of the coal that you have ever bought of them? A. Not that I have been aware of in the office.

Q. Have you personally examined the coal that you
240 have bought of them? A. No.

Q. Then personally you have not seen the coal? A. No.

241

CHARLES T. WESSELS, being duly sworn and examined as a witness for the libellants, testified:

By Mr. Putnam:

Q. You are one of the libellants in this action and one of the firm of Wessels & Co? A. Yes.

Q. They have been in the fruit business about how many years? A. In the banana business about 15 years; ever since it started practically.

Q. In business from what ports? A. From the Island of Jamacia, Honduras, Guatemala, and the United States of Colombia. 242

Q. You were a member of the firm at the time this charter party was made in 1891? A. Yes.

Q. About what time was the Ceres delivered over to your firm? A. I think on the 2d day of July, 1891.

Q. That was at Guatemala? A. Livingston, Guatemala.

Q. How soon after that did she reach New York? A. I think on the 15th of the same month.

243

Q. Did your firm address a letter to the owners subsequent to the arrival here? A. Yes; several.

By the Court:

Q. Did she bring fruit on that first trip? A. Yes, sir.

Mr. Putnam offers in evidence the letters of the following dates:

244

Aug. 7/91; marked Ex. 3.
Aug. 14/91; marked Ex. 4.
Sep. 21/91; marked Ex. 8.
Nov. 4/91; Wessels to Wigg; marked Ex. 10.
Nov. 5/91; Wigg to Wessels; marked Ex. 11.
Nov. 5/91; Wessels to Wigg; marked Ex. 12.
Nov. 5/91; Wigg to Wessels; marked Ex. 13.
Nov. 6/91; Wessels to Wigg; marked Ex. 14.
Nov. 24/91; Wessels to Wigg; marked Ex. 15.
Nov. 24/91; Wigg to Wessels; marked Ex. 16.
Nov. 24/91; Beijer to Wessels; marked Ex. 17.

245 Nov. 24/91; Wessels to Beijer; marked Ex. 18.
Dec. 5/91; Beijer to Wessels; marked Ex. 19.
Dec. 12/91; Beijer to Wessels; marked Ex. 22.
Dec. 18/91; Wessels to Beijer; marked Ex. 23.
Dec. 11/91; Wessels to Svensson; marked Ex. 20.
Dec. 11/91; Wessels to Wigg; marked Ex. 21.
Jan. 14/92; two letters Wessels to Wigg; marked respectively Ex. 35, and Ex. 36.
Jan. 20/92; Wigg to Wessels; marked Ex. 42.

246 Q. In the month of November can you state when the steamer *Ceres* arrived at this port? A. I think it was about the 26th or 27th of November; some time in the end of the month.

Claimant's counsel produces and puts in evidence a letter from Wigg to Captain Svensson, June 28, 1892; said letter giving notice of extension, as of October 2, 1891. It is marked Ex. 9.

247 Q. Did you have any interviews with Messrs. Wigg and the master in December in respect to the speed of the *Ceres*? A. No; I was in Honduras in December.

Q. When did you return? A. The day before New Year's.

Q. So that what occurred prior to that you have no knowledge of? A. No, sir.

Q. Did you have anything to do with making the re-charter to Vanderbilt? A. Nothing; I was away.

Q. Did you have anything to do with these notices
248 of the 14th of January, respecting the laying up clause? A. Yes.

Q. Those were notices sent to Wigg? A. Sent to Wigg.

Q. At that time where was the *Ceres*? A. In Mobile.

Q. Did you send those notices by mail, or were they delivered the same day! A. I think they were sent together by messenger, to Wigg's office.

Q. Did you have any communication with Mr. Wigg between the 14th of January, when they were sent,

and the 20th of January, when his letter was sent? 249
A. Yes.

Q. On more than one occasion? A. I think there were at least three.

Q. Was there any objection made at any of those interviews to the notice to lay up?

Objected to, there being no authority on the part of Wigg to make any admissions or variations, other than to give notice.

Question allowed.

250

A. None.

Q. Did you have any communication with Mr. Wigg in respect to employing the boat during the lay-up period? A. Yes.

Q. Was that before or after the 20th? A. That was before the 20th; I think the same day that we sent up the notices to lay up.

Q. What did he ask to do with the steamer? A. He asked permission to employ the steamer for the owner's account for the two weeks' lay-up, or during 251
the two weeks she was to be laid up.

Objected to. Objection overruled.

Q. Was there any charter party entered into with the *Ceres* through Wigg? A. No.

Q. You assented to Wigg's request? A. I did; under certain conditions.

Q. How did you receive this letter of the 20th? A. Mr. Wigg brought it in in person.

Q. Did you have any conversation at the time he 252
delivered it? A. Yes.

Q. Can you state what the conversation was at the time he delivered the letter? A. The substance of the conversation was that he had had a cable from the owners to come in and make a protest; that he did make it; but he thought the protest, or rather what was embodied in the protest, was all nonsense and that the owners were entirely wrong.

Claimant's counsel moves to strike out the answer as immaterial. Decision reserved.

253 Q. Did you state all the conversation that you had? A. Well, that was merely the substance; and in reply, I think my father and brother were both present also, and we talked the matter over and told him such an idea, the idea of paying for the lay up was utterly novel and unheard of, etc., and as he was the broker in making the charter, and knew perfectly well that the lay up was to be without hire, that we didn't like the idea of his bringing the protest in.

254 Objected to that Wigg had no authority to vary his instructions.

Libellant's counsel offers in evidence letters of the 16th and 21st of January, 1892, from Beijer to Wessels; they are marked respectively Ex. 40 and Ex. 43. Also a letter of reply from Wessels to Beijer, of February 5, 1892, which is marked Ex. 53.

Q. (Handing witness paper.) Is that a copy of the re-charter? A. I think it is.

255 By the Court:

Q. Dated what? A. The 30th of November, 1891.

Q. For how long? A. Until the 1st of March, 1892.

Q. From what date? A. From the 10th of December about.

Q. At how much? A. $3,250 per month; without guaranty of speed.

256 The charter party is put in evidence, subject to correction, and is marked Ex. 2.

By Mr. Putnam:

Q. What happened to Mr. Vanderbilt after entering into that charter? A. He made one trip with the steamer and then failed.

Q. Did he give notice of that? A. Very early in January; and turned the steamer over to us again.

By the Court:

Q. Give notice of what; his failure? A. Of his inability to pay.

Q. Did he surrender the steamer to you again? A. 257
Yes.

By Mr. Putnam:

Q. Can you tell about what day he surrendered the steamer to you? A. I think some where around the first week of January, the 7th or 10th I believe.

By Mr. Kirlin:

Q. Have you any writing about that? A. No; it was done by an agent of his verbally, here in the city. 258

By the Court:

Q. Do you remember when you came into possession of the vessel after the surrender? A. I think some time around the 10th of January, 1892, at any rate prior to the 14th.

Q. Do you know whether the captain had notice of the surrender? A. Yes, sir.

Q. Before or after the 14th? A. Before the 14th.

By Mr. Putnam: 259

Q. I show you an abstract of the log of the *Ceres*, by Captain Svensson, and ask you whether that is one you received from him? A. Yes, sir.

Q. By that abstract does it state what day the vessel came to Mobile? A. It does.

Q. What is the date? A. On the 7th of January, 1892, it arrived at Mobile, at 4 P. M.

The abstract is offered in evidence and marked Ex. 66.

260

Q. In this abstract of the log is the average miles per hour given? A. It is.

Q. What is the average? A. On the outward voyage, 11.

Q. Had she ever averaged, or reported to average that on any previous log of yours? A. I believe not.

By the Court:

Q. What voyage was that? A. That was from New York to Greytown via Jamaica. She left New York

261 December 12, 1891, and arrived at Kingston on the 18th of December, 1891.

By Mr. Putnam:

Q. Did you also receive this next abstract of log? A. Yes.

The second abstract is offered in evidence and marked Exhibit 68.

Q. State what dates are referred to in that abstract of log. A. Left Pensacola February 27, 1892, for
262 Greytown and Bocas del Toro; left Bocas del Toro on the 14th of March, 1892, and arrived at New York on the 23d of March, 1892.

By the Court:

Q. What does that show the average speed? A. 11 and 3/10 on the out trip and 10 and 9/10 on the home ward trip.

By Mr. Putnam:

Q. This abstract of log was received by you where?
263 A. In New York.

Q. From the ship? A. From the captain.

Q. How was the other one, 66, received by you? A. I don't remember positively; but I think by mail from Pensacola or Mobile.

Q. Subsequent to these voyages did she make two voyages for you with fruit? A. She did.

Q. In March, April and May? A. Yes.

Q. Can you tell us the date when she arrived on the 8th voyage, in April? A. April the 19th, I think.

264 Q. Look at this calendar and see what day of the week that was? A. That would be Tuesday.

Q. The 8th voyage she arrived here on the 19th of April? A. The 19th of April.

Q. Have a memorandum of the date that she started from Colon? A. Yes, sir.

Q. Just state what the date of starting was? A. She left Colon on the 11th of April.

Q. She had a cargo of bananas for your firm at that time? A. She did.

Q. How many bunches? A. 13,389, as I remember 265
it.

Q. On the 9th voyage what day did she arrive? A. On the 16th of May.

Q. Did she have a cargo of bananas then? A. She did

Q. How many bunches? A. A few over 18,000; I think 18,200 and odd

Q. What was the condition of the bananas on their arrival here on the 8th voyage? A. The cargo was ripe. 266

Q. Were any of them rotted? A. A great many.

Q. How was it with the 9th voyage? A. That was also ripe; part of the cargo rotten.

Q. Suppose the steamer had made 11 knots; have you calculated what time she would have arrived here on the 8th voyage?

Objected to that the guarantee clause was not for knots on the chart, but for knots through the water.

Question allowed. 267

A. I can't answer you exactly that way because I haven't figured it up; that would require some little calculation.

Q. Have you calculated it up so as to state how many days she was over time? A. Not exactly; but I can do it. I can give you the details of that; it is merely a matter of figures.

By the Court: 268

Q. You had better make the calculation and give it afterwards.

Q. After arrival here in May, do you know whether or not she went on the dry dock? A. She did.

Q. And on the 21st of May you sent the notice of this letter, did you not, to Hurlbut & Co., who were then the agents of the steamer? A. Yes, sir.

Libellant's counsel offers said letter, and the reply, dated May 23d; they are marked respectively Ex. 58 and Ex. 59.

269 Libellant's counsel also offers letter from Wessels to Hurlbut, dated May 25th; it is marked Ex. 60.

Claimant's counsel offers in evidence depositions of Captain Svensson, Carl Holmberg and Gustav Holmquist; also the exhibits marked for identification annexed to the depositions.

Q. Had you, before this time, made other charter parties with clause providing for laying up at charter-
270 er's option? A. I had made one.

Q. Had you known of others made by other persons?

A. Yes.

Q. Both before and since this? A. Yes, sir.

Q. Have you ever known of a case, either before or since this, in which hire was claimed for the time the vessel was laid up at charterer's option?

Objected to as immaterial, and also as undertaking to explain writing by parol, and because the question is not limited to this form of char-
271 ter.

Question allowed.

A. Neither before or since.

Q. Were you aware, at any time before the conclusion of the 9th voyage, of any defect in the boilers or furnaces, or anything that rendered them inefficient or unable to perform the guaranteed speed? A. Not after the expiration of the first voyage, in July the previous year.

272 Q. At the time that the vessel made the 8th and 9th voyages, which are the last two in question, did you know that the furnaces or boilers were collapsed, or in an unsafe and dangerous condition? A. No.

Q. Did you know of any collapse or sinking down of the furnaces at that time? A. No.

Cross-Examined by Mr. Kirlin:

Q. Were you here when the receipt for the steamer's hire beginning when you took the vessel back in your

custody about the 1st of February was given? A. 273
Yes, sir; I think so.

Q. Have you that receipt with you? A. No.

Q. Do you recollect that there was a clause in the receipt stating that the hire which was specified to be for the period beginning on the 1st of February, or whatever date it was you took it back, was without prejudice to the owner's claims for the preceding half month's hire? A. My impression is that either the receipt contained such a clause or there was some talk that it should contain it. 274

Q. Isn't it a fact that it did contain it? A. I can't say positively.

Claimant's counsel calls for the production of the receipt.

By the Court:

Q. That is, the preceding half month, being during the lay up? A. During the lay up.

By Mr. Kirlin: 275

Q. When you ordered the vessel to lay up, beginning the 17th of January, had you any information that the vessel was in need of overhauling? A. At that precise time?

Q. Yes. A. No information more than my ordinary steamship knowledge.

Q. Wasn't it your understanding that you had a right to lay the vessel up for two weeks irrespective of whether she needed any repairs or not? A. I had a right to lay the vessel up and insist upon repairing. 276

Q. Whether she needed repairs or not? A. Of course I wouldn't have a right to insist upon unnecessary repairs, but from my knowledge of steamships, I knew that all vessels need repairing occasionally.

Q. What knowledge had you at that time that the vessel needed repairing? A. None whatever.

Q. What reason had you for supposing she needed repairing? A. My experience as a steamship man; I know steamers need repairing once a year.

277 Q. You knew she had been overhauled during the year? A. No; I knew she had not; from hearsay.

Q. Didn't the abstracts that you had received while the vessel was under the Vanderbilt charter indicate that she had made better speed than she had ever made before since you had her under your charter? A. Yes, it did.

Q. Didn't she make better speed on the second voyage after you took her back, excepting the one under the Vanderbilt charter, beginning on the 2nd of Feb-
278 ruary, or thereabouts? A. The abstract shows a higher average.

Q. Did you not intimate to the captain at the time that it was on account of trade depression that you wanted the vessel to lay up for two weeks? A. Yes; that was why we selected that particular time. We would naturally settle on the time that best suited us.

Q. Was it not the fact that you received hire for the use of the vessel from Vanderbilt up to and including the 23d of January? A. Well, the one check
279 we got from Vanderbilt was returned, protested, and then I had a lot of correspondence and personal interviews with his agent. I had to go to Trenton to see both Vanderbilt and his agent, and eventually I compromised the charter, which extended to the 1st of March, for a certain sum of money—I forget the amount—but runnning in that way I didn't think it would run as far as the 23d of January.

Q. Read the telegram dated the 9th of January, and see if that refreshes your recollection any. A.
280 Well, I should say it must have run then till the 23d of January, but still the payment mentioned there was also in consideration of cancelling the rest of the charter up to the first of March.

By the Court:

Q. That would be for 6 days then after your notice? A. Yes, sir; we commenced on the 17th.

By Mr. Kirlin:

Q. About the telegram of the captain to attach

cargo and specie belonging to Vanderbilt; he had at- 281
tached cargo or specie, had he not? A. I understood later that he had, from his telegram, though I did not so understand at the time.

Q. Did he telegraph that he had stopped the specie? A. No; I couldn't make head or tail out of it, or what it was.

Q. You telegraphed him on the 9th of January, "Hire still unpaid," was specie paid to you on account of charter, or is it on account of freight? A. That is precisely what I mean; I couldn't make out just what 282
relation the specie had to the ship.

Q. Then on that night you telegraphed him, "We have received hire until January 23d; release everything upon receiving costs and marshal's fees." I infer from that that you understood he had seized something? A. Yes, but that telegram was sent at 2 A. M. from Trenton, written in a great hurry; I presumed he had sent Smith, our lawyer in Mobile, to libel the cargo.

Q. Wasn't it with the belief that Captain Svensson 283
had seized something for your account that you telegraphed him that night that you had received the hire and he should release whatever was seized? A. Why, of course, that was the object of the telegram, to release everything.

Q. Do you remember at what hour of the day the steamer arrived on the first voyage on which you make claim here, the 19th of April? A. She arrived at 9.40 P. M. at the Scotland Lightship.

Q. She didn't get up to the city until Saturday 284
morning? A. The next morning. Pardon me; she didn't get in Saturday night; she got in Tuesday night; you are talking of the 8th?

Q. Then she arrived Wednesday morning, the 20th? A. Yes.

Q. You also stated that she had 13,389 bunches of bananas on board; had she anything else? A. Yes.

Q. What? A. Some coffee, ivory nuts, rubber and a few cocoanuts, or some cocoanuts.

Q. The second voyage on which you claim damages

285 ended on the 16th of May and the vessel arrived with 18,200 bunches of bananas; did she carry anything else? A. Yes, an assortment of about the same nature of cargo.

Q. Had you no cause of complaint against the engine-room up to the time the vessel arrived in New York on the 16th of April, 1892? A. I was away from New York from the middle of August until the day before New Year's, and of course I am not familiar with what passed at this end of the line.

286 Q. During the time you were here had you any cause of complaint? A. She wasn't running here except that she had made only one trip before that; she had been running in the Gulf trade.

Q. Had you received any complaints from the subcharterers about the speed? A. No; we gave them no speed guarantee and they had no right to complain.

Q. So far as your personal knowledge goes, there was no reason to make any complaint of the engine-room until the voyage ending in New York on the 287 19th of April; is that right? A. That is right as far as my personal knowledge goes.

Q. Referring to your letter to Wigg, dated the 11th of December, had you the steamship *Jamaica* under charter at that time? A. No, sir.

Q. Where was she? A. She belonged to us and was then on a coral reef in Central America.

Q. Isn't it a fact that you were desirous of having Mr. Roberts mentioned in this letter, chief engineer of the *Jamaica*, employed on the *Ceres* as engineer? A. 288 I may have wanted it personally, but my people knew nothing of it; I was in Central America.

Q. Didn't you make some representations to the captain concerning it? A. I did at that end; I offered to pay part of his wages to put Roberts in, with the idea that he would increase the vessel's speed, but I didn't write of it to my New York firm.

Q. After the charter party was thrown up in May, 1892, is it not the fact that you made a proposition to Mr. Bennett, of the firm of Hurlbut & Co., looking to

the re-charter of the *Ceres* at a lower rate? A. No, 289
sir. What do you mean by "recharter?"

Q. A charter then? A. To us?

Q. Yes. A. No, sir.

Q. Didn't you make a proposition to charter the vessel? A. No, sir.

Q. Something took place between you and Captain Bennett at that time, tell us what it was? A. You mean something relating to our retaking the *Ceres?*

Q. Something relating to another agreement of the charter of the *Ceres?* A. Absolutely nothing. 290

Q. You know Captain Bennett? A. Intimately.

Q. What did you say to him about chartering the *Ceres* about that time? A. Well, I am positive the subject of our taking the *Ceres* under charter again was never mentioned, unless it would be to the effect that I didn't want her. I have no recollection of anything.

Q. You have no recollection of any conversation with Bennett on the subject of the *Ceres?* A. I have had several with him; but absolutely nothing that 291
could be construed in the nature of our retaking her; that is, under another charter.

Q. Before you actually rejected her did you say anything to Bennett about continuing her at a lower rate? A. No, sir.

Q. Did you try to place her with some other firm? A. Yes.

Q. What firm? A. I think I told both Funch, Edye & Co. and Hurlbut & Co. to see if they could place her for whatever balance of the 30 days would remain 292
after the end of her repairs, simply to avoid a row with her owners for the slight difference. I think I told Captain Svensson the same thing; that was before she was thrown up.

Q. Had you any other steamers under charter at the time you rejected the *Ceres?* A. Yes, sir.

Q. Did you continue those charters afterwards? A. We had two others; one we continued, the other we didn't.

Q. The other you let go? A. The other we let go.

293 Q. Isn't a fact that you were drawing out of the importation of bananas about that time? A. It is a fact that we drew out of the importation of bananas about that time.

Q. Isn't it a fact that you had under charter the steamship *America*, running at the same port as the *Ceres*, arriving in New York shortly after you threw up the *Ceres*? A. Yes, sir; we threw up the charter of the *America*; she was running in a different trade, however.

294 Q. Has there been any litigation on the subject of the *America* since then? A. No, sir.

Q. You settled the balance of the *America* at the time you discontinued her use, didn't you? A. Oh, yes, afterwards.

Q. For the remaining period of the charter? A. Yes.

Q. Isn't it a fact that the first intimation you had of any trouble with the boilers was at the end of the last voyage the steamer made for you? A. Well, to an-
295 swer your exact words, I knew at the beginning of the ninth voyage that the boilers had caused some detention of the ship, but I was told by the captain that the manhole gasket had blown out.

Q. The packing of the manhole had blown out? A. Yes.

Q. I refer now to what Mr. Putnam calls the "collapse;" when did you receive the first intimation of that? A. After the ship got back.

Q. That was the last voyage? A. At the end of
296 the last voyage.

Q. You understood that that collapse occurred at Colon just before she started for New York? A. No, I didn't so understand.

Q. When was it? A. I don't think I ever heard definitely when it did occur until you examined your witnesses and I read their testimony.

Q. Did you know when the steamer arrived in New York from Livingston at the end of the first voyage that a patch on one of the boilers required some atten-

tion? A. Yes, I found that out through the inspec- 297
tion for the passenger license.

Q. That was attended to then, was it not? A. The certificate was granted; they assured me that was all right.

Re-Direct Examination by Mr. Putnam:

Q. When was it that the steamer left Mobile after coming in there on the 7th of January, 1892? A. I shall have to look at the abstract to see.

Q. Just give us that date to see how long she laid 298
there. A. She left Mobile on the 4th of February.

By the Court:

Q. Then on what trip did she start? A. She went from there to Greytown and back to Pensacola.

Q. Sent out by you or by whom? A. By the Export Coal Company under a subsequent charter to them by us.

Q. Under a charter by you to them? A. After Vanderbilt failed we re-chartered her again to the Ex- 299
port Coal Company, for whom she made two trips.

Q. Then she wasn't employed at all during that fourteen days? A. Not at all; laid idle.

By Mr. Putnam:

Q. During your experience as a merchant have you chartered other steamers for several years in fruit trade? A. I have.

Q. Are you familiar with the different kinds of coal that are supplied here for ocean steamers? A. I am.

Q. What is the relative grade and value of Poca- 300
hontas coal as compared with other steaming coal? A. Since it has been introduced it has taken the first place and is the dearest coal that can be bought here.

Q. And you supplied the Pocahontas coal to the *Ceres* every voyage to New York except one? A. Yes, sir.

Q. And on that voyage you had Berwind-White's coal? A. Yes.

Q. Why did you change on that voyage? A. For

301 two reasons; one is the captain was growling about the quality of the coal, and the other is that I had promised Berwind White to give them an order some time and I thought I might as well do it then; and for those two reasons I gave the *Ceres* on that last voyage Eureka, which is Berwind-White's coal.

Q. Did you ever make any offer to them to buy the coal themselves if they were dissatisfied? A. I think that was early in the history of the charter, before I went to Central America; I think Wigg and Captain
302 Svensson were together——

Objected to. Objection overruled.

Q. What offer did you make to them? A. I told them if Pocahontas wasn't good enough for them that I would give them permission to go out in the market and get anything better and we would pay the bills.

Q. Was Pocahontas coal used by your other steamers at this time? A. Always.

Q. And some of the coal went to the *Ceres* and
303 some went to the other steamers? A. Yes, sir; part of the barges would go into the *Ceres* and the balance would go into the other boats, or *vice versa*.

By Mr. Kirlin:

Q. You said that Captain Svensson could buy his own coal. Was there anything said about price? A. I don't believe there was.

Q. Were you proposing to allow them to pay whatever they might wish? A. No; I knew they couldn't
304 buy any coal that would cost as much as the Pocahontas in this market, or the American market anywhere; I was perfectly safe.

Q. Did you get any discount on the Pocahontas? A. The Pocahontas is the only one of the two coals on which I can't get any discount; there are discounts on all the others.

305

ANDREW PHILP, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Putnam:

Q. You are an engineer and machinist? A. Yes, sir.

Q. You do business under the name of the Glasgow Iron Works, at 29 West street, New York? A. Yes, sir.

Q. Do you know the steamship *Ceres* and have you 306
worked on her? A. I have.

Q. In the month of December, 1891, you did some work on the *Ceres*, did you not? A. About that time; I can't tell exactly.

Q. Where was the steamer at that time—what place in New York? A. To the best of my recollection she was in the dry dock in Hoboken; I am not exactly certain of dates.

Q. Do you remember about that time putting some steam pipes into her hold? A. Yes, sir; steam pipes 307
were put in the holds down at Pier 3, North River.

Q. Can you state what work you did on her altogether in the month of December, 1891, or the amount of the bill? Look at this memorandum to refresh your recollection. (Witness examines paper.) A. Yes; I must have done about that amount of work.

Q. How much did you do on her in the month of December, 1891? A. It must have been from seven to eight hundred dollars worth.

Mr. Kirlin objects. 308

Q. Did you make an overhauling of the *Ceres* at that time, in December, 1891?

Mr. Kirlin objects to the word "overhauling" unless Mr. Putnam makes his meaning of that word clear. Objection overruled.

A. I done what work I was asked to do; but I didn't make a regular overhauling of the ship.

Q. What do you understand by the word "over-

309 hauling?" A. That is to go through everything—examine everything and put the ship to rights.

Q. You do that to steamships from time to time, do you not? A. We do it occasionally when we are asked.

Q. You didn't make any such examination of this steamer as you would do for an overhauling? A. No, sir.

Q. You also made some repairs on the steamer in May, 1892? A. Yes.

310 Q. And the amount is stated on this bill? A. Yes—I don't recollect.

Q. Isn't that a correct statement of the amount? A. No, sir, it is not.

By the Court:

Q. Do you know the amount in May, 1892? A. I can't give it exactly; but it run close to $1,400.

By Mr. Putnam:

Q. Can you tell us what work it was besides putting
311 in a propellor? A. Yes, sir; a new plate on the outside of the ship, and I done some work on the boilers, engines and ballast tank.

Q. That was done by your foreman, or by yourself, personally? A. By myself personally.

Q. You cannot give the details of that work, can you? A. No; for we don't keep no account of that.

Q. What did you do to the propeller; did you put on blades or the hub? A. Both blades and hub.

Q. That was in May, 1892? A. Yes.

312 Q. Did you have men in May, 1892, scaling the boilers too? A. Yes, sir.

Q. Do you know what the condition of the furnaces was at that time? A. I see nothing much about them; I didn't examine them in May.

Q. Did you examine them previous to that at any time? A. I looked into them in April.

Q. What work did you do on them in April? A. We done some caulking and patching inside of the furnaces.

Q. What patches did you put on? A. We didn't 313
put on any; we re-caulked them.

Q. Did you do that personally, or through your foreman? A. My foreman was on it.

Cross-Examined by Mr. Kirlin:

Q. What did you do in December, 1891, besides putting steam pipes in the holds? A. Well, we was on the dry dock and done considerable work around her hull; I can't give that exactly.

Q. Anything on the engines? A. Well; we might 314
have done some small patches on the engines.

Q. And around the winches? A. I don't recollect of doing anything on the winches, if I seen the bills I could tell.

Q. You did everything that was required to put the boat in order? A. Yes, sir.

Q. As far as you know, when you got through with her she was in good order? A. I couldn't say anything in regard to that except what work I done.

Q. You weren't aware that anything else needed to 315
be done? A. No, sir; I was not.

Q. Have you included the steam pipes in the amount that you say you did for the ship in December? A. I don't count exactly the month we done that on; but we put in all new pipes in the forward and after holds.

Q. What for? A. To keep the ship up to whatever temperature they wished.

Q. To keep the cargo warm? A. Yes, sir.

Q. In April, when you re-caulked the patches, did you notice anything the matter with the furnaces 316
except that the patches needed re-caulking? A. Yes, sir.

Q. What? A. We noticed the upper part of the furnaces down, the same as if it had dropped; about three of the furnaces on the starboard side.

Q. Did you do anything about that? A. We examined it, but we didn't do anything more than scaling and planing.

Q. Why not? A. There was an inspector came

317 there and examined it, and he considered it good enough to go to sea with.

Q. Who was the inspector. A. I cant't give his name.

Q. Is it Mr. Haug? A. I don't recollect; I didn't know the gentleman, and I didn't pay much attention to him.

Q. You tightened the rivets with a patch? A. Yes, sir.

Q. And then it was all right? A. It was all right
318 at the time, but it was a thing that naturally gave out again.

Q. Did it give out? A. Not to my knowledge.

Q. Did it give out up to May, when you repaired her again? A. I didn't hear anything of it.

Q. As far as you know, when you repaired her in May, 1892, what you had done in April was still sufficient and good? A. As far as ever I hear.

Q. Did you notice, when you repaired her again, in May, that the top of the furnace was down? A. I
319 didn't pay no more attention to that.

Q. You didn't notice that in May? A. No, I didn't pay no more attention to it as long as they was willing to take her out and run her.

Re-Direct Examination by Mr. Putnam:

Q. Was there anything said to you about their taking those old boilers out and putting new ones in? A. There was some mention of it made.

Q. They didn't wish to spend any more money than
320 they were obliged to? A. No, sir.

Q. Was anything said about their putting in a triple expansion engine? A. Yes, sir

Q. Who said that to you? A. It was both the engineer and the captain; Captain Svensson.

Q. You say in April there came an inspector to the ship, who said the boilers would do; you know Mr. Haug, and have known him for a great many years? A. Well, I know the gentleman.

Q. Do you know whether it was he or not? A. No, I don't think it was he.

U. S. DISTRICT COURT, 321

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS and another, Libellants. AGAINST THE STEAMSHIP CERES, &c., O. J. SVENSSON, Claimant.	In Admiralty. 322

Depositions taken before GEORGE A. BAKER, Notary Public, New York, August 19th, 1892, pursuant to notice.

APPEARANCES:

Messrs. WING, SHOUDY & PUTNAM (Mr. PUTNAM), for libellant.

Messrs. CONVERS & KIRLIN (Mr. CONVERS), for 323 claimant.

O. J. SVENSSON, called on behalf of claimant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Convers:

I am thirty-four years of age; live at Malmo, Sweden; have followed the sea since I was fourteen years of age; have held a master's certificate for thirteen years last past and have been master of the 324 steamer *Ceres* since she has been running under the charter with Messrs. Wessels & Company, dated May 25, 1891. I joined the ship at Malmo and sailed from there to London first and from London to Newport and took in coals and sailed for Livingston, Gautemala. The *Ceres* is an iron ship of 581 tons net register, 720 dead weight capacity exclusive of bunkers, which are of one hundred tons capacity, and she is about 63,300 cubic feet clear cargo capacity exclusive of bunkers, and was built in 1883 at Malmo, Sweden,

325 and is owned by the South Swedish Steamship Company. I reported at Livingston to Mr. I. Rich and started on the charter on the 2nd of July, 1891, and loaded aboard a cargo of bananas gathered along the coast at different ports, and proceeded thence to New York and delivered my cargo to Messrs. Wessels & Co. I continued to make similar voyages with the vessel between New York and Gautemala, carrying general cargo down and bananas up and West India nuts, &c. I continued to make those voyages until about the
326 6th of December, when I docked the vessel here at charterers' request for cleaning and putting the vessel in order.

Q. Up to that time had any claim been made against the steamers by the charterers for any damage to cargo? A. No, sir.

Q. Had any claim been made by them that you had delivered cargoes damaged by reason of the unusual or improper length of any of the voyages? A. No, sir. During that time the charterers had paid the semi-
327 monthly hire without deduction, except a few days off which we agreed upon.

Q. Did they ask for any deduction on account of failure to make the speed mentioned in the charter party? A. Not to my knowledge. I was about four days off hire on dock and returned to service under the charter party about the 9th of December.

Q. Did you receive any instructions from Messrs. Wessels & Co. respecting the sub-charter of the vessel by them. A. While I was in dock I got orders from
328 Wessels & Co. that she was sub-let or re-chartered to another firm.

Q. Did they furnish you with a copy of said charter? A. Yes, sir.

Q. Will you produce it? A. Yes, sir. That is it.

(Witness produces both original and sub-charter, and the original is marked Claimants' Exhibit 1, and the sub-charter Claimants' Exhibit 2.)

WITNESS: She was sub-chartered to Vanderbilt.

Q. Where did you go under that sub-charter? A. 329
We carried a general cargo from here to Jamaica and Jamaica to Bocas del Toro; from Bocas del Toro to Port Limon and also to Greytown with different cargoes. Thereafter I returned to Bocas del Toro again and loaded there in different places around Bocas del Toro and proceeded with a cargo to Mobile and arrived at Mobile January 8, 1892, and discharged cargo and I got letters and telegrams from Messrs Wessels & Co. which I now produce.

Q. What was there in those letters and telegrams 330
which led you to act in any way with respect to the vessel?

Objected to on the ground that the letters and telegrams should be produced as the best evidence of their contents.

A. Well, I got instructions from Messrs. Wessels & Co. to stop cargo—not to discharge the cargo on account of the fact that the hire was not paid.

Q. Not paid by Vanderbilt? A. Not paid by Van- 331
derbilt. But as the weather was very severe and very cold, and was below freezing point every night, I was afraid to stop cargo over night on account of spoiling it all, as I had no heating pipes in the holds. But as Vanderbilt had some money belonging to him on board ship I stopped the money instead and informed Messrs. Wessels about it, and then discharged the cargo.

Q. How long did the vessel lay there for account of
the sub-charterer? A. I got instructions from Wessels 332
& Co. to let the vessel sail for Vanderbilt's account.

Testimony objected to by proctor for libellant, on the ground that the instructions should be produced.

Mr. Convers: The instructions are produced and are contained in correspondence and telegram herewith produced.

Witness: I got instructions by telegram that the

333 hire was paid up to the 24th of the same month, January.

Mr. Putnam: I move to strike out the testimony, as the telegram speaks for itself and secondary evidence of its contents is inadmissible.

Mr. Convers: The telegram being produced speaks for itself.

Witness (Continuing): And to inform Wessels by telegram where Vanderbilt wanted the ship to sail, as
334 they wanted to know. Mr. Vanderbilt came down to me, and when he saw what amount of money he got for the fruit, and as he couldn't pay he left Mobile again, after which I got a telegram and letter from Wessels & Co., in which they stated that Vanderbilt had surrendered the vessel over to them, and they told me to lay up for their account.

Counsel for libellant repeats motion to strike out all testimony as to the contents of telegram and letters until they are produced.

335 Mr. Convers: The letters and telegrams are produced and present for examination before the notary and the proctors for the respective parties, and they will be marked in due course.

Proctor for libellant requests that the telegram to which the witness has just been referred or letter be identified now, that they may see to what they relate.

Mr. Convers: Letters and telegrams are open
336 for inspection, and are handed to proctor for libellant for his use as he may see fit.

Proctor, for libellant, states that he will not receive them until they are marked for identification, or otherwise so that they can be referred to.

Q. What did you do on the instructions which you received from the charterers? A. Well, I wrote Wessels and said I was very sorry; I believe the letter was in that strain, that they had got the vessel laid off, and I also told them that the ship would be ready

for their account at a few hours' notice at any time 337
they wanted her.

Q. What was the condition of your boat at that time? A. The same as it is now, ready to go any time.

Q. What was the condition of her bottom and her engines? A. Of course she was in first-class condition, because we had been on dock a short time before, as stated in New York, where she was overhauled.

Q. And where was it that you received orders to lay up for two weeks? A. In Mobile. 338

Q. Was there a dock sufficient to accommodate your vessel, or other facilities by which you could have overhauled her at Mobile, if it had been necessary or proper to do so? A. No, sir.

Q. Will you produce the letters and telegrams received by you from Wessels? A. I herewith produce twelve letters between the dates of December 11, 1891, and March 30, 1892, inclusive, and twelve telegrams between January 7, 1892, and February 3, 1892, inclusive. 339

Telegrams marked Exhibits 25, 26, 27, 29, 30, 31, 33, 37, 44, 47, 50, 52.

Letters marked Exhibits 20, 24, 28, 34, 38, 39, 46, 48, 49, 51, 55, 56.

Q. What were the next instructions you received from the charterers in respect to the vessel? A. I received instructions by letter, dated January 26, 1892, that they had re-chartered the vessel to Munson, or to the Export Coal Co., of Pensacola, to run one or two 340
trips for their account and for me to fill their orders.

Proctor for libellants objects to contents of the letter being testified to by the witness.

Q. On the strength of such statements in their letter what did you do with the vessel? A. I took cargo in Mobile after instructions from Mr. Canfield, Secretary of the Export Coal Company, and went with full cargo of coal from there to Greytown, Nicaragua, where it was discharged; after that I went back again to Pen-

341 sacola where I loaded another full cargo of coal and at the same time two members of Wessels' firm, two of the sons, came aboard to go with me on a voyage to buy fruit on the coast of Colombia after the cargo was discharged in Greytown; after leaving Greytown we arrived in Bocas del Toro March 10 and from there we went to Colon and got currency for buying fruit and returned to Bocas del Toro again loaded a cargo of fruit with which cargo we returned to New York where it was landed in the best condition.

342 Q. When did you sail for Colon again? A. After that we made two more trips down to Colombia, one trip without any of the firm aboard and the second trip with Mr. Henry Wessels; on both trips we took cargo in at Colon and landed in New York and discharged Tuesday, May 17, and on the following day I got orders to proceed into dry dock where I made a thorough overhauling according to the charterers' orders ready for going on the fruit trade.

Q. What notice did you receive from the charterers
343 with respect to their continued use of the vessel? A. While she was lying in dry dock they told me that they wanted to discontinue the fruit business, I mean as charterers of the vessel, but they wanted to try to sub-let the vessel to some other fruit firm even if they lost something, they were willing to pay the difference.

Q. Did Wessels say anything to you on the 18th of May with respect to the further use of your vessel? A. Well, about the 18th of May Mr. CharlesWessels came
344 aboard while ship was in dry dock and looked at the vessel and found her in good condition; at the same time he regretted he could not have himself any use for the vessel, but were trying to sub-let to other parties. I can't say it was that date, but it was about that date.

Q. Were any further voyages made for the charterers under this charter? A. No, sir; after she was off dry dock I was given to understand that Wessels could not re-charter the vessel as they told me they had no use for it, they could not run it for their own trade and I re-chartered her to Messrs. Dumois & Co.,

for £600 a month, fifty pounds less than we had re- 345
ceived from Wessels.

Q. While your vessel was running under the sub-charter to the Coal Company what speed was she making? A. As I will show by extracts of the log she was making over eleven knots an hour average.

Q. What condition of load? A. With full vessel.

Q. Did you communicate that fact to Wessels? A. Yes, sir; communicated by letter as well as at the same time sending abstract of the log.

MR. CONVERS: I ask for the production of the 346
letter.

MR. PUTNAM: Your notice to produce was served so late last night that we have not been able to get our correspondence, but we will produce two abstracts of the log which we have.

Said abstracts marked Exhibits 67 and 68.

Q. Referring to Exhibit 67 I notice the average speed on the outward voyage is given as 10.3 knots, explain under what conditions that voyage was made? 347
A. Very stormy passage.

Q. On the homeward run it shows an average speed of 11.4 per hour? A. Yes, sir; by the patent log.

Q. I notice that Exhibit 68 shows that the voyage out the average speed was eleven three-tenths, is that correct? A. Yes, sir: coal loaded vessel.

Q. And on her voyage home her average speed is shown as 10.9? A. Under not quite favorable circumstances, having a heavy sea.

Q. Did you have any communications with the char- 348
terers with respect to the speed that your vessel was making while serving them under their charter? A. Yes, sir; I wrote to them showing that as shown by the log and told them that if they would supply me with a certain kind of coals just as good I would be able to make good speed to New York.

Proctor for claimants called for letter referred to by witness. Same promised to be produced.

349 Witness: I wrote to Wessels from Pensacola enclosing them Exhibit 67.

Q. When you reached New York did you have any conversation with Wessels on this subject and what was it? A. I said the coals were not good and were not to be compared with those in Pensacola and Mobile, they replied that they gave me the best coals they could get in the market.

Q. On the first voyage did Wessels make any complaint to you and at what time that the vessel was not
350 making 11 knots? A. I believe in August, I don't think it was before August, they asked how it was I could not make 11 knots average, I answered that it was due to the coals which were bad according to my opinion and also to the engineers and everybody who was handling it, it was also partly due—that we could not make the accustomed speed or the usual speed that she did in home waters which was over twelve knots—to the fact that the ship was built for short voyages which Mr. Wessels would understand by referring to
351 the charter party which says that the bunkers only hold one hundred tons. On account of the small capacity of the bunkers and as the voyages for Wessels required between 300 and 400 tons for a round voyage I had to put the other coals in the after end of the ship which put her down to about 18 feet—made the steamer's draught lower with heavy cargo—her full capacity is 16 average or 16½ aft and 15½ forward. Now by putting the coals the way we had to do the ship was very light forward, only drawing between 10
352 and 11 feet, and this hindered her headway to a great extent.

Q. Other things being equal would your vessel make faster or slower time in Northern or Southern waters? A. Well, of course, she should be able to make fast time in Northern waters, cooler waters, on account of the fact that they could get a better vacuum which increases the revolutions of the engine.

Q. Was there any difference in the condition of the vessel when she was running under the coal charter and made 11 knots as compared with the times she was

making the other voyage and failed to make the 11 353
knots? A. Just as good condition the only difference is on account of the quantity of coals we had to carry, she deepened by the stern; but that she could make 11 knots was shown by the trip when she was taking coals in Pensacola, and when we left Bocas del Toro for New York, when she also had a heavy load of coals for the use of her engines she made 10.9 average, which was very nearly 11 but on account of heavy head seas in the whole Caribean sea she was detained.

Q. Did you see this coal that was being taken on 354
board on this vessel of the quality of which you have complained? A. Yes, sir; I saw every voyage—saw the coal every time.

Q. Will you describe the apparent quality of the coal? A. Well, I can say that all the time we were running for Wessels the coals were very small and I believe they had never been screened and were very dull looking, there was no shine in them and the most part of the time in a whole quantity between two and three hundred tons you would not find a large 355
piece.

Q. Has there been any change in the vessel or her equipment since she has been running under the charter to H. Dumois & Company as compared with the same while she was running under the charter to Wessels? A. Well, we just put in another propeller, shifted the blades, when she was in the dock which I did at the request of the Wessels, which request was made after she was docked the first time.

Q. About what time? A. I can't say exactly; some 356
time through the winter I told him I had another blade and I would try it.

Q Did you have any conversation with Messrs. Wessels and if so which member of the firm with regard to changing the blades of propeller? A. I had conversation in the Messrs. Wessels' office about some new blades which were in the ship and they asked me then why I did not put them on when I was in dock the first time in place of the ones I had on; to which I answered that it was a heavy blade and it cost too

357 much money but if they thought they would have use for the vessel a longer time I would put them in the next time I was on dock which I did without asking any further questions.

Q. What have you to say as to the quality and appearance of the coals that had been furnished your steamer while she has been running under the charter to Dumois & Co.? A. The coals look larger, which my engineer can testify to and we can keep better steam with them which is shown by the speed of the
358 steamer after she was chartered by Dumois.

Q. When you say better steam do you mean by that with a higher pressure of steam as appeared by the steam gauge on the same consumption of coal? A. A little more coal as you get more power when you burn more coal, and when you get more steam you can get more speed.

Q. And this larger quantity of steam that you refer to would be indicated by the steam gauge? A. Yes, sir; of course, you have to keep according to the
359 charter party the pressure of steam up to a certain point; then, of course, you have variable expansion slides, and you can shorten or widen as you like, and by the better coals furnished by Dumois & Co. we can let out the expansion, which gives more pressure in the cylinder and gives more revolutions.

Q. Complaint has been made against the insufficiency of the awnings aboard your steamer; will you state when the awnings which were used during the charter to Wessels were made? A. When I was in Malmo,
360 when I got orders to go on the steamer *Ceres*, we had no such awnings on board and had no time to make them in Sweden; wherefore we telegraphed over to England to a sailmaker who knew the dimensions of the steamer to make awnings for the deck overhead—the length of the deck—of cotton duck heavy enough to shed rain—that was the point of the telegram. Those awnings we received in London, but on receiving them there was one short, and on arriving from Livingston in New York on the first voyage I told Mr. Wessels this, and he told me that he would be very

glad to supply me with that awning which was short, 361
which he had several of, laying to no use.

Q. Did he furnish you with the awning? A. Yes, sir; for one hatch; that was used for the fore hatch; he gave it to me for the vessel and never asked anything for it.

Q. What was the quality of the awnings which you bought in England as compared with the awning which Wessels loaned you? A. About the same quality; Wessels' was a little heavier, but as it was older and had been used before it did not shed water any better 362
than the awnings which we had from the other side.

Q. You saw these awnings exposed to the rain frequently? A. Yes, sir; when they were properly held out for rain they shed rain, and the only time when they didn't shed rain was when we had to take in cargo or discharge cargo—when we had to haul the ends or the sides of the awnings so high up that they were level with the middle of the awning. This made the water, instead of running off the sides, stop in the middle, and, of course, this quantity of water made it 363
so that several drops came through, and I can show by testimony from Messrs. Dumois & Co. that the awnings were to their full satisfaction and just as good and better than in some of their own ships which are running fruit business.

Q. When doubled up in the way you stated would any awning have leaked? A. Any awning would leak if hauled in that way, which we have to do to let the men pass through, because it wasn't high enough, and we had to haul it up to let them pass under, and on 364
this point I informed Messrs. Wessels. I will state that the only time I heard the Messrs. Wessels complain about this awning was the last trip she made for those gentlemen, and when they pointed out to me, and then I told them, as I say now, that if we hauled it down to the rail and let the water off sufficient to stop it they would be tight.

Q. What did they say to that? A. Nothing; they were too busy with fruit.

Q. Now, during the time that you were running

365 under this charter how was the machinery of your vessel maintained? A. The machinery was always maintained in a first-class condition, as it is now at the present time.

Q. Were there any more than the usual repairs necessary incidental to the work that was done under the character of the service? A. There was no work at all done in the machinery during the time I was on that charter.

Q. What, if anything, was done to the boilers? A.
366 One of the boilers in the ship—the starboard boiler—there were two small holes over the furnaces, which came there the second year the boilers were made on account of bad oil, which happens very often to steamers—bad oil which comes in the boiler, which prevents the water coming through, the substance, the fat, stops there and heats up so much that the pressure comes in the boiler.

Q. Takes the life out of the iron? A. Yes, sir; which happens very often in steamers; there are very
367 few in the fruit trade that do not have the same thing and worse than she is.

Q. When were those repairs made and what was the character of them? A. The first trip the *Ceres* came here we had some repairs done to the same boiler, which Messrs. Wessels knew about; I will say at the same time that that boiler has had patches on and has passed this year and also last year by Lloyd's surveyor as being in first-class condition and sufficient to be classed as a passenger steamer, which class of steamers
368 have to have the best kind of machinery.

Q. During your voyages under the Wessels charter was the *Ceres'* failure to make the 11 knots per hour as specified in the charter caused by any defect of her machinery, hull or equipments? A. No, we could keep up the pressure of steam which the boilers are built for when the coals are good enough to keep up that steam.

Q. While you were running under this charter to Wessels were you running on a schedule time in connection with other vessels used in a similar trade? A.

When I first came out here I was made to understand 369
that I was going to run semi-weekly together with other steamers, the *Jamaica* and *America*; they had schedule time for leaving and I know that the *Ceres* made just as good and better time than their own steamer, the *Jamaica*, and none of those steamers had ever to wait on the *Ceres* as the *Ceres* was always on time here and kept up her trips in good order although she was a larger ship and needed longer time to discharge and take in cargo.

Q. When you stated that you used more coal in 370
performing the voyages under the charter to Dumois did you mean to have us understand that you used more because the coal was better and burnt freer or because it wasn't so good? A. It was because the coal was better and burned freer and of course if you want speed out of a ship you have to burn more coal, every knot more the ship makes the proportion of coal is greater.

Q. Did you burn all the coals you could to advan- 371
tage to make speed while running under the charter to Wessels? A. Yes, sir. I am bound on a voyage to sea.

Cross-Examination by Mr. Putnam:

Q. You have always been a sailor and a captain of vessels and you have never been an engineer or fireman, have you? A. No, sir; but in Sweden we have to go through what we call—to pass as captain we have to know about steam navigation and have to understand the machinery. 372

Q. You have never actually acted as an engineer? A. No, sir, I never acted as engineer.

Q. Now, on the voyage on the Pensacola charter was there any supercargo on board with you? A. No, sir.

Q. Did you make over 11 knots average on any other voyages except the one that is referred to in these two abstracts of logs, Exhibits 67 and 68, between the time of entering on the charter in July, 1891, and the time in May when the charter was discontinued? A.

373 There was one voyage when she was re-chartered by Wessels to Vanderbilt she was deeply loaded and was in very even keel on account of the manner of cargo we took in wherefore we could trim her that time and she made 11 knots average between New York and Kingston.

Q. Just get the abstract and show the date of the voyage.

Witness produces abstract, the same is marked Exhibit 66. Witness after looking at other ab-
374 stracts states that there are no other abstracts showing that speed.

Q. Now, under this Pensacola charter you say that she made a number of knots by your patent log? A. Yes, sir.

Q. Now, do you mean by that patent log a taffrail log? A. Yes, sir.

Q. Is that also true of the voyage from New York to Kingston stated in Exhibit 66—that you used that
375 log? A. Yes, sir, and we use the same log for Dumois and Company and have been using it ever since I came out here.

Q. You have based your entries in these different abstracts on the record made by that log? A. Yes, sir.

Q. You don't mean to testify that there are 1585 nautical miles from Sandy Hook to Kingston, do you? A. I mean to testify that that log ran that distance.

Q. That is the taffrail log? A. Yes, sir.

376 Q. Now, there is a certain amount of error in taffrail logs? A. Yes, I know there is a certain amount of error.

Q. Isn't there more error in that log down in the Gulf on account of seaweed than there is up North here? A. No, sir—there is a difference that seaweed would be there of course.

Q. Which would make an error? A. Yes, sir; as soon as we touch seaweed then she makes less speed.

Q. You don't mean to testify that on any of these voyages then, where you have given the number of

miles run, that is the exact number of geographical 377
or nautical miles between the two ends of the voyage? A. I don't mean to say that if you stood ashore and marked the distance on a straight line that you would get so many miles, but when you sail down there you strike head winds and head seas which makes the percentage greater.

Q. That is the way you fix the distance on this voyage? A. Yes, sir.

Q. Don't you every day when you are at sea correct your dead reckoning by observation, if the weather 378
permits? A. Yes, sir; I do, I don't put that distance down because that is not the distance she has made; it is the actual distance she has made through the water; I put down the amount of miles which she has been going through the water, not over the botton of the sea.

Q. But all those entries of the actual distance around correcting the errors of the taffrail log appear in your regular book, don't they? A. They appear by the reckoning of the sun every day. 379

Q. That is entered in your ship's log book? A. Yes, sir.

MR. PUTNAM: Now, we call, Mr. Convers, for the log books.

MR. CONVERS: We have got the log books, we will let you inspect them.

Q. How many log books do you keep? A. One for the engineer and one for the deck.

Q. Do you keep a private log in which you make 380
your own entries as distinguished from those made by the mate in the deck log? A. Of course I have a scrap log where I make my figures, but that is copied exactly into the deck log, as is always done.

Q. You have that scrap log here? A. No, sir.

Q. You can send that to Mr. Convers? A. I can send them but I must have all of them on the homeward voyage.

Proctor for libellant asks to see the log book. Without parting with the possession of them

381 and submitting it for inspection, captain hands proctor for libellant log book, being from May 28, 1891, to May 7, 1892. Same is marked Libellant's Exhibit A. 1.

WITNESS: That book covers the whole time under Wessels' charter except the last half voyage.

Witness produces another log beginning on the 7th of May and continuing to various dates on and after the 25th of May, being the first twelve pages of the book.

382 Said eleven pages are marked Libellant's Exhibit B. 1 for identification.

Libellant's proctor consents that as to the twelve pages a Consul's certified copy may be substituted for the original to allow the log book to go away with the vessel.

Proctor for claimant undertakes to furnish such certified copy.

Libellant's counsel asks that the scrap log be produced.

383 Q. Have you abstracts of the last two voyages made under the charter from Greytown to New York and back under Wessels' charter? A. Yes, sir: I have them here.

Q. You can produce them? A. Yes, sir.

Same produced and marked Exhibts 69 and 70.

Q. As I understand you, Captain, the distance run on these two logs is also measured by the taffrail log
384 and not by the miles on the chart? A. Yes, sir.

Q. Do you know what the actual distance is between New York and Colon? A. You can see in all the abstracts what the distance was.

Q. I shall have to repeat my question. Do you know what the distance is from New York to Colon? A. I could not exactly say what the actual distance is.

Q. It is very much less than 2,200 miles? A. It is a little less.

Q. Do you think it is 2,000? A. A little over 2,000.

Q. Do you think it is as much as 1,950? A. It is 385
over that.

Q. Actual distance in nautical miles of 6,080 feet to the mile? A. If you take a straight line down to Colon.

Q. You can't do that without going over the land? A. No, sir.

Q. But the actual distance following the usual channels and courses that are made do you know the number of miles? A. It is something over 2,000.

Q. You feel sure of that? A. Yes, sir. 386

Q. When you leave Colon and start on a voyage north what is the point of land that you steer for? A. That we steer for?

Q. You don't steer for Sandy Hook but for some intermediate point? A. We steer for Nevassa Islands.

Q. Is that the first point? A. The Nevassa Islands nearest to Hayti.

Q. What is the point of land you will lay your course for? A. Nevassa Islands.

Q. Isn't there some point you lay your course for? 387
A. The islands; I can't give you a certain point.

Q. Do you know the number of miles from Colon to Nevassa Islands? A. No, sir; I can't carry in my head a thing like that.

Q. As I understand you, then, you have not in any other case taken any other miles than the showing made by the revolutions of the taffrail log? A. I have given my distance as shown by that log.

Q. That is not dead reckoning? A. Yes, sir; it is dead reckoning. 388

Q. In your actual calculation you have corrected that taffrail log by your observation when weather permitted? A. Yes, sir; but you might strike a current some day which would put you out, and that is the reason you can't go by observation, and if you put in the log things and the current takes you so much out of the way you would not have the correct distance.

Q. How much do you think the current put you out of the way between Colon and Nevassa Islands? A. Well, we can't be put much out of the way, only the

389 distance might be abont two hundred miles out of the course.

Q. Coming from there to the northward, how much might it put you out of your course? A. It might put you out coming northward, as there is alwavs head winds.

Q. I am asking you about the current, not about the wind.

Q. Coming northward to New York?

Q. From Nevassa Islands? A. I can't exactly say,

390 but the current may be running two miles an hour.

Q. Is the current helping you after you get into the Gulf Stream? A. On this part it is only helping you about a few miles, as far as Cape Hatteras.

Q. Anyhow, you have in all instances taken the revolutions of the taffrail log to make the distance run? A. Yes, sir.

Q. Whose patent log is this? A. Walker's patent log, made in England.

Q. It was on the vessel when you first went on? A.

391 I brought it when I left London.

Q. Has it ever been adjusted since it was put on? A. Of course it is adjusted, she made the same thing the whole time, but I never had it adjusted.

Q. Has it ever been adjusted? A. No.

Q. It has not? A. No.

Q. Who were your agents, Captain, in collecting this hire of the steamer? A. Well, I believe Messrs. Wessels paid it right into Drexel, Morgan & Co.

Q. Who was the agent that represented you here in

392 New York during the time of this charter? A. Rudgard, Wigg & Co.

Q. The same man as signed this charter-party as broker? A. Yes, sir.

Q. Do you know of any correspondence with them in regard to the speed of the vessel, did they ever show you any letters? A. No, sir.

Q. Did they send them right to the owners? A. I don't know.

Q. Did you ever have any talk about what speed the vessel was making? A. Yes, sir.

Q. Didn't they say that there were complaints that 393
the vessel wasn't making her guaranteed speed? A. Yes, sir; some complaints were made to me by Mr. Wessels. That was made the first time she got here. The second trip—well, the first trip she made a round voyage, of course, the second actually, then I told them if they weren't satisfied they could throw up the charter and get another vessel.

Q. Do you know what notice they gave you in October, 1891, about throwing up the charter? A. No, sir, I don't know; I haven't seen it. 394

Q. That was done with Mr Wigg? A. Mr. Wigg.

Q. Was there ever a time, Captain, either in the Gulf or up here that you made on a voyage full 11 knots with fruit or light laden under this charter between the 2d of July and the date in May when it was discontinued? A. Well, as I say, the trips we made for Vanderbilt

Q. Wasn't that the time you stated that she was loaded with coal and was deeply laden? A. No, sir; she couldn't make it on account of the coal. 395

Q. So there has never been a time since the 2d of July up to the date in May that she ever made 11 knots with fruit or light laden. That is, on an average speed? A. Of course I can't call that a light load; we were drawing 17 and 18 feet on account of the coal she had to carry and that was what detained her.

Q. That, Captain, is reasoning. As a matter of fact, as I understood, she has never averaged over eleven knots. A. No, sir.

Q. I suppose you don't know exactly how the engi- 396
neer would cut off the steam in working the engine when he was driving her, do you: you didn't go down and see the cut off? A. I know what it is, I have been down there several times.

Q. Do you know how many times he cut her off? A. It is marked in tens or hundreds.

Q. That is in the engineer's log? A. Yes, sir; but on account of the coals we could never put more than three-tenths amount of steam on.

397 Q. What coals did you have when you were running in that voyage from Pensacola? A. We had the usual kind of coal you get down there, I can't give you the name.

Q. Do you know who furnishes it? A. The Export Coal Co.

Q. Do you know what grade of coals you had there, by what name the coals are called? A. No, sir; I do not know.

Q. Do you know whether it is what is called Poca-
398 hontas? A. I have heard Messrs. Wessels speak of Pocahontas, but there are different kinds of Pocahontas as well as any other; there are screened and unscreened and slag.

Q. Do you think this you have a good kind? A. Yes, sir.

Q. Do you know what kind of coal you are burning now? A. No, sir; I don't know what coal, it is better.

Q. Do you know the grade, what it is called? A. I
399 don't know the grade.

Q. Your engineer knows that? A. Well, he doesn't know the grade either.

Q. Who supplies the coal? A. Dumois & Co.

Q. They are not coal dealers? A. We don't know where he gets the coal.

Q. Do you know what dealers bring it alongside? A. No, sir.

Q. Don't they get a receipt from the engineer? A. No, sir.

400 Q. You had always coal enough on board running under this charter? Yes, sir.

Q. If you didn't have room enough in the bunkers you carried it somewhere else? A. Had to carry it on the top deck.

Q. What coal did you bring out with you from Newport? A. We brought Welsh coal.

Q. What is known as Welsh steaming coal? A. Yes, sir.

Q. How long did that coal last you? A. It lasted

me from Newport to Livingston and from there to 401
New York and then we had some left.

Q. Did you make eleven knots with that coal when you came from Livingston to New York? A. No, she was too deep loaded.

Q. How much coal did she have? A. About 300 tons of coal when we left Livingston.

Q. As I understand, you were shipping coal in the Pensacola charter? A. She was shipping coal but she was heavy loaded in the Pensacola charter.

Q. You could trim the coal wherever you wanted it? 402
A. On account of the charter we must save the forepart of the place and we couldn't take the coals there.

Q. When you brought the coal up from Livingston to New York where was it carried, that that was outside of your bunker? A. That was left outside we carried on the top deck in No. 3 hatch.

Q. Wasn't it carried in the main tank? A. No, number 3 hatch.

Q. That is the main tank? A. Yes, sir.

Q. Very nearly amidships? A. Just about amid- 403
ships; she had all the rest of the coal aft.

Q. Your log-book will show what she drew forward and aft? It is entered in the log? A. Yes, sir; I think so.

Q. Do you know what she averaged that trip? A. I can tell by the log book.

MR. CONVERS: Do you mean draught or speed?

Q. Speed. A. I can see by the log; I believe it 404
was 10.3, but then I see we had very stormy weather (referring to log-book.)

Q. Can you see from your log what the draught was forward and aft? A. On arrival to New York she was drawing 14 feet aft.

Q. That is about as good trim as you get it? A. That is not bad trim; but we had stormy weather.

Q. She had the best Welsh coal and she had as good trim as you could put her on and yet that first voyage she did not come up to 11 knots? A. She did not;

405 probably on account of the firemen just from home they were not used to this hot weather down there and very nearly all sick, and I also see that on the last day coming from Livingston to New York we had one day's fog outside of Sandy Hook, which time we had to go slow.

Q. Is that entered in your abstract? A. Yes; it is entered in the abstract.

Q. You can leave that abstract with us? A. Yes, sir.

406 Such abstract last referred to marked Claimant's Exhibit E. 6 for identification.

Q. You were asked by Mr. Convers if there was anything in the hull, machinery or equipment of the steamer that prevented her from making the guaranteed speed, and you said no? A. Yes, sir.

Q. Now, I ask you what he omitted; wasn't there something always the matter with the starboard boiler; she wasn't as good as the port one? A. Of course, as
407 I mentioned there were patches put on her but as she was classed, that boiler passed survey as first-class. I can't say that there was anything the matter, because she was never stopped; of course the time we had to stop here to patch her up that time is off-counted off. A good many of the vessels out here in these southern waters have to be repaired and patched and there is no complaint made about it.

Q. Do you know how many tubes of the starboard boiler were defective and leaking at the time you made
408 the last voyage under this charter? A. I don't know how many.

Q. The engineer would know that, wouldn't he? A. I believe so; that is the reason I wanted to get into the dock, because I wanted to fix the vessel.

Q. You say that she was passed by a surveyor of the Norwegian Lloyds? A. No, sir; in the English Lloyds.

Q. What surveyor was that? A. By Mr. Condon; he is engineer surveyor in the Lloyds.

Q. What time was it he passed the boilers? A. He 409
passed the boilers when she was in the dock this time.

Q. When you say this time what time do you mean? A. After she was chartered for Wessels.

Q. After the 25th of May? A. Not after the 25th of May because it was about that date.

Q. It was some days after they discontinued the charter? A. They discontinued the charter the 28th.

Q. Isn't it a fact that after the charter was discontinued there was five or six days working on that boiler, putting in new patches, cutting out defective 410
metal before the surveyor could pass it? A. No, sir.

Q. Isn't it a fact, Captain, they required supports to be put into the furnaces previous to that when you were going out to Colon from New York? A. No, sir; there was no such requirement.

Q. You don't mean that Mr. Condon himself went aboard to examine her? A. No, his engineer surveyor.

Q What engineer? A. His engineer surveyor.

Q. Do you know his name? A. I do not. 411

Q. Would you know his name if you should hear? A. I would not.

Q. Isn't it a fact that you were required to do something to support the furnaces to keep them from collapsing of that starboard boiler before she was actually put in dry dock? A. No, sir; there was some conversation between the engineer and the ship's engineer, a man called Mr. Phillips which did all our work on recommendation of Mr. Wessels here, which recommended him; there was a conversation between that 412
Mr. Phillips and my chief engineer about the supports, but when the surveyor came aboard he said that they were not needed; it would be just as good to put patches on, which would be just as strong.

Q. I want to get at the time this was when he said the patches would be as strong. A. I couldn't exactly say.

Q. Was it in the spring of this year? A. I will see if I can find it.

Q. Was it before or after Wessels gave up the char-

413 ter? A. Just about the time when they gave up the charter; just about the time.

Q. I want to ask you if previous to that there was something required of you or the ship to support the furnaces that had collapsed? A. They had collapsed the first year the boilers were made; there are no more defects at the present time except that every time you put on a new patch you have to make new holes; and of course, every time the patch gets larger.

Q. How many times has that starboard boiler been
414 patched? A. I can't exactly say, about two times out here.

Q. Two times under this charter, you mean? A. Yes, sir; several times they have been, because the rivets got leaking and I had to tighten the rivets.

Q. Then you don't call it patching, just tightening the rivets? A. No, sir.

Q. That you could do on board ship? A. Yes, sir.

Q. Didn't you have a talk with Mr. Henry Wessels on board of the ship about the boiler, and didn't you
415 tell him you were going home to get new boilers? A. Well, I never put in new boilers; I had a talk with Mr. Henry Wessels on board; and I told him that I would try if I could go home this winter and to recommend to get stronger boilers, triple expansion boilers, as it would save coals and make a better market value ship.

Q. Can you tell how long this starboard boiler has been in the ship? A. Since it was new; nine years ago; just the same as the other boiler.

416 Q. Never had been replaced? A. No, sir.

Q. The engineer from time to time would report to you, wouldn't he, when there was anything the matter with the boilers? A. Yes, sir; he would if there was anything the matter.

Q. Anything serious he would report? A. If there was anything serious.

Q. Didn't he report to you very frequently during these ten and a half months that the boilers were leaking? A. No, sir.

Q. How many times do you think he did report?

A. He only reported when there was anything needed 417
to rivet, to tighten the rivets.

Q. I ask you how many times he reported that to you? A. I can't exactly say how many times; it is not possible for me to say.

Q. Ten or twenty times? A. No, sir; we had talks about the boilers; if you say actually reported, he never reported anything about them.

Q. Was there any voyage that you ever made, the whole voyage, in which he did not say something to you about the condition of the boilers, or one of them? 418
A. Yes, sir; more than one voyage.

Q. Can you think of more than one voyage in which he did not speak? A. Yes, sir; of course.

Q. Is that the one in which she made the 11 knots in the Gulf of Mexico? A. He never reported anything because he had nothing to report, because the boilers were just as strong as if new.

Q. You said you could remember of one voyage, perhaps more, that he did not report at all? A. Yes, sir; several times. 419

Q. I want to get the voyages he did not report at all? A. I haven't kept a memorandum book in my pocket and never do, but I know there were several voyages without him talking about them; I know just as well as he did about the boilers; he didn't need to report anything; I was down there and he talked about the boilers.

Q. Can you mention, either by your memory or by these abstracts, any one single voyage in which he did not report anything the matter with the boilers? A. 420
He did not report; as I say there were several voyages, very nearly every voyage, when he never mentioned the boilers.

Q. I ask you if you can pick out one voyage in which he did not mention the boilers? A. I say he might—one voyage he might and next voyage he might not; I can't pick out the voyages.

Q. You think there were some voyages when he did not mention them? A. I think several voyages.

Q. Can you tell, Captain, how much money was

421 spent in repairing the starboard boiler during the next week after Wessels had discontinued, and in getting her ready to go under the new charter to Dumois? A. No, I can't exactly say.

Q. Can you tell how long a time the men were engaged in working on that boiler? A. They were engaged very little there.

Q. Can you tell how many days? A. About one day, I guess.

Q. Will you testify that it was not less than a week
422 for the work on the boilers? A. I can't tell; they were cleaning the boilers, and we had work to do which kept us a week shifting the blades, and that is the reason Mr. Phillips knew there was very little to do with the boiler, and he wanted as many men as he could get with the other work and to hurry up that, as to not delay us.

Q. You can't say whether it was one or six days? A. I can't give you the amount.

Q. I am asking you the time? A. I could remem-
423 ber if I see the bills; I haven't the bill; I had my own work to do.

Q. When you came out from England did you have the same propeller? A. Yes, sir.

Q. Were the new blades put on after this charter was over? A. They were put on this last time in dock.

Q. Do you know whether the pitch of them are the the same as the old one? A. The pitch is about the same.

424 Q. Then the change that you speak of that was made when you were last in dock of putting on a new propeller, was putting new blades? A. Yes, sir.

Q. How many hatches does the steamer have for freight? A. Four hatches.

Q. And they are numbered one, two, three and four? A. Yes, sir; what you like.

Q. How do you number them on your ship? A. Call them different number.

Q. What is the main hatch, number 3 or 4? A. Number two main hatch.

Q. You remember Mr. Wessels speaking to you 425
about the water passing down the hatch into the hold when he was aboard? A. Yes, I remember that; that was the last voyage we made for Mr. Wessels.

Q. Do you remember saying to him that they were the best awnings you had? A. I remember saying that they were the awnings we made for the purpose.

Q. The awnings that were made in England? A. For this purpose.

Q. I believe there is no dispute here about the number of tons of coal left in the steamer's bunkers at the 426
end of the charter; were there 84 tons there? A. I believe 84 tons.

Q. You had never been commander of this steamer before she started under this charter, as I understand? A. Yes, sir; I had.

Q. You had commanded her? A. Not immediately before; but before again, two years before.

Q. When you knew her two years before, that would be in 1889? A. 1889, yes.

Q. Did you run her in American waters or foreign 427
waters? A. From Malmo, Sweden, to Newcastle, Eng.

Q. Right across the North Sea? A. The North Sea.

Q. Do you know what speed she made then? A. She made always an average between 11 and 12.

Q. What was the condition of the boilers then? A. Just exactly as now.

Q. Leaking too? A. There were two patches in the boilers that had to be looked after just as now. 428

Q. Were they leaking? A. Had to be looked after.

Q. All boilers have to be looked after; the question was whether they were leaking? A. That starboard boiler had to be looked after.

Q. Was there any time that you commanded her that the vessel averaged such slow speed as she has averaged in eleven months under this charter? A. No, sir.

Q. Always did better? A. Always did better.

Q. In that trade between Malmo and Newcastle did

429 you carry general cargo? A. General cargo, cattle and coals.

Q. Cattle on deck? A. Cattle out, all full and cattle and cargo home.

Q. Cattle from Sweden to England? A. Yes, sir.

Q. You would go light then, wouldn't you? A. With cattle?

Q. Yes. A. We had different products too.

Q. When you have the steamer light laden what do you consider her draught is? A. I consider her in
430 home waters with cattle about fourteen feet.

Q. Would that cover the propeller? A. Oh, yes; that is about fourteen feet aft.

Q. Can you account for it, Captain, that she made 12 knots in your water and with the same propeller and with the best of Welsh steaming coal in these waters here she fell off to between ten and eleven? A. I cannot account for it except it was very bad coal.

Q. You had the very best coal from Newport? A. I mean that it was that and we had little bad weather
431 and because we had some firemen, we had two, that we had to send ashore that same trip very sick; one went away and the other came back again.

Q. Was there any day on that voyage that she made 11 knots? A. No; there was not.

Q. In fine weather or foul? A. Well, we had not fine weather, and, as I say, we had a couple of firemen that were not used to this climate and couldn't stand the heat.

Q. Did you get new firemen after you got here to
432 New York? A. I got two firemen the first voyage.

Q. That was here in New York? A. Yes, sir.

Q. What explanation did you give to Wessels & Co. on the first voyage of the steamer, that she had fallen so far below what it was expected to make? A. I can't remember exactly that first voyage just now.

Q. Did you tell them that she would do better after you got new firemen or after she had run longer? A. I said I would try to do my best for them; that is all.

Q. Didn't you say that she would make better time? A. I said I believed she would make better time.

Q. You say you got instructions when you were 433
down to the Gulf from Wessels & Co. to do different things? A. Yes, sir.

Q. I understand you that all those instructions that you received are in the telegrams or the letters that have been produced here, is that not so? A. All the instructions? Well, I believe so.

Q. I am referring to instructions in the Gulf, not here? A. I have all the letters and telegrams except two, which I sent to my owners, which is about the payment of the hire up to the 24th of January; and 434
that letter I sent home because they asked for it.

Q. Are you able to state by your letters or otherwise which ones those are you sent home? A. I can't exactly tell which they were.

Q. In stowing the coals on the steamer or in trimming the steamer did you put them where you thought best or did you have instructions where to carry the coal? A. I put them to have them handy for the firemen. I could not put them in the forepart of the ship because it would spoil the hold for the fruit cargo; 435
I had to have the holds clean for the fruit; and if I used it that would interfere with that and I couldn't afford it.

Q. You put the coals where you thought they would be most convenient for your firemen and the fires? A. Well, yes, the best of my belief.

Q. Did you consult with the engineer where to put the coal? A. Did not, for I could only put it in one place on the ship; couldn't put it where the fruit was to go because it would be dirty for the fruit. 436

Q. On this first voyage from Livingston to New York, where you drew 14 feet forward and 16 aft, you had the ship on an even trim, didn't you? A. That is the reason we had that coal in the main tank, you see.

Q. When they were carried in the main tanks the vessel went on an even trim? A. I believe that time we had no fruit aft.

Proctor for claimant asks that the libellant

437 produce the correspondence between the libellants and the charterers' agent Wigg.

MR. PUTNAM: We will produce what we have. We will make a search and produce what we can find.

RE-DIRECT EXAMINATION by Mr. Convers:

Q. Why didn't you carry less coal from New York and coal at South America in running under the Wessels charter? A. I had orders to coal sufficient to take
438 me back and forward.

Q. And those coals were furnished by Wessels? A. By Wessels & Co.

Q. At New York? A. Yes, sir.

Q. Did Wessels ever find fault with you or say anything to you with respect to the location of these coals that you carried? A. No, sir.

Q. These extra coals? A. No, sir.

Q. Will you not refer to your log and fix the date when the charterers refused to further employ the
439 steamer? A. Well, I can't exactly say. I suppose they gave Hurlbut notice; Hurlbut & Co. were afterwards appointed agents.

Q. Do you know how many days the vessel was in the use of Wessels & Co. over the half month for which he paid? A. Well, I understand they had to pay the 1st and 15th of every month; after she was laid up in January I understand they paid every half month. She was delivered over to the dock and the hire was off Wednesday, the 18th.

440 Q. What time on the 18th was she delivered over? A. She was laid up on the midnight of the 18th; all the stuff was out of her then; I mean the midnight between the 17th and 18th.

Q. Was all the time that was occupied in making these repairs to which you have referred deducted and allowed out of the charter hire? A. Of course, deducted from the charter.

Q. Can you state from your experience as master of a vessel whether these repairs averaged less than the usual repairs incident to the service in which such a

vessel was engaged? A. I think even for a steamer 441
built for European waters and to come out here that the average days that the ship had to be repaired were less than the average.

Re Cross-Examination. Mr. Putnam:

Q. Did you ever command any other fruit steamer in these waters? A. Not in these waters.

442

Carl Holmberg, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Direct Examination by Mr. Convers:

Last witness being sworn to act, and acting, as interpreter.

I am second engineer of the Steamship *Ceres* and have acted as chief engineer for the last two voyages since the chief engineer Axel Sjoberg left the vessel on 13th June, 1892. He has left the steamer and returned 443
to Sweden. I know when he left the ship he went home. I don't know if he has arrived.

I was present when the two log books produced were copied. The entries, I believe, were made by the chief engineer, and as far as I know the entries are correct; the entries are in the chief engineer's handwriting, except the last few pages where I have entered something myself since the chief engineer left.

Engineer's Log Books produced and marked 444
Exhibits 72 and 73.

Q. Did you ever hear the chief engineer while the vessel was running under Wessels' charter complain of the bad quality of the coal that was furnished her? A. He complained always and had very much trouble with the coal, on account of the firemen grumbling about their being too small.

Q. What was the complaint the engineer made? A. I can't say exactly any particular complaint, because

445 they were so bad there was every complaint to make about them. I have myself several times had to go out and shovel coal when the firemen have been sick and I have several times tried the coal and can testify that it was bad.

Q. In what respect did their inferior quality present itself to you; were they large or small or what? A. The coals were very small, and if you should measure them I don't think a tenth part of it could be called coal.

446 Q. How does the coal that was furnished you by Wessels compare in quality with the coal which the vessel has used since she has been running under the charter to Dumois? A. The coals which are supplied by Dumois were far better for steaming; but I can't exactly say wherein the difference lies, except that they are larger. I am bound on a voyage to sea.

Cross-Examination by Mr. Putnam:

Q. How does the size of the coal that you got in
447 England compare with the coal that you got from Wessels? A. It is not possible to compare those coals with the English coals, as there was not a single lump which you can show that really compares with the English coals.

Q. Can you state which coals were the larger pieces, English coal or the coal furnished by Wessels; I mean the English coal brought out from Newport? A. There is not any possible way to compare those two kinds of coal; the coals which we got in Newport were all large
448 pieces; but Wessels' coals were always very small.

Q. What was the condition of the starboard boiler when you got to America and up through the time you were running under the Wessels' charter? A. Just as good condition as the other one.

Q. Is it the fact the furnaces in the starboard boiler have collapsed and are leaking? A. They have collapsed.

Q. Is it not also true the furnaces of the port boilers have collapsed? A. In one furnace but very little.

Q. Can you tell how many tubes there were of

the starboard boiler in May last that were plugged up 449
or were leaking? A. About three or four tubes.

Q. How many tubes are there in the starboard boiler? A. There is 480 tubes in both boilers.

Q. How many tubes in the starboard boiler? A. 240 tubes.

Q. Is it not a fact that in April last, when they tried to get up steam the tubes leaked so that the fires nearly went out? A. It is not true. It was not on account of the tubes, but there was one packing around one of the manholes in the boiler, it blew out through bad 450
packing and the water rushed out and had to be pumped out of the boiler; they repaired it and put new packing in it.

Q. When was that? A. In April.

Q. How many times has that boiler been patched while you have been an engineer on the steamer? A. Three patches on one side and four patches on the other side, I believe.

Q. By that you mean three patches on one boiler? A. It has been renewed three times on one of the holes 451
and four times on the other.

Q. How many holes were there? A. There are two holes on the upper furnace and one on the outside of the starboard boiler.

Q. What was it that blew out in April that caused the fires to be put out? A. Nothing else than the packing of that manhole.

Q. Isn't the manhole screwed in? A. It is screwed in, but at the same time the packing can be got out by the force of the steam. 452

Q. The packing did blow out? A. The packing did blow out.

Q. Did any of the patches blow out? A. No.

Q. How large is the largest patch in the boiler at the present time? A. I can't exactly say; but I believe that the largest one is three feet by ten inches.

Q. When you said that the furnaces were collapsed how long have they been in that condition? A. When they first did it was at Colon.

Q. They have been in that condition ever since?

453 A. They have been exactly in the same condition after that.

Q. Did you have sometimes to use salt water in the boilers? A. Not then; but before we always had salt water.

Q. Did you use salt water in the boilers regularly before they collapsed? A. Not always, but we had a tank in the ship which holds a certain quantity of fresh water which we use as long as it lasts; afterwards, when it is empty we had to use salt water on those
454 long voyages.

Q. If the boiler had not leaked wouldn't you have been able to condense water enough to keep fresh water in the boilers? A. No.

Q. Did you have a condenser on board? A. Yes.

Q. Do you remember being on board the steamer in April when the mechanics scaled the boiler? A. Yes, sir.

Q. How long did they work at that? A. About two days.

455 Q. How long before that had the boilers been scaled? A. About five weeks.

Q. Were they scaled by the people here or the men on the vessel? A. Partly by men here and partly by the people on the steamer.

Q. Was anything done to the boilers at the time the vessel was in dry dock in December last? A. They were cleaned.

Q. Was anything done to them? A. I can't remember.

456 Q. Well, you would remember if there was anything done when they were in dry dock. A. I can't remember that there was anything done to the boilers.

Q. Did the steamer go faster with the new propeller?

Form of question objected to.

A. It should be about the same.

Q. Did the steamer go faster with the new propeller? A. It is about the same.

Q. What is the difference in the size of the propeller between the new and the old one? A. The new

one in diameter is exactly 13 feet and four inches; I 457
can't remember the difference.

Q. Was the old one larger or smaller? A. This one is the largest.

Q. How much is the difference? A. I can't say; it is very little.

RE-DIRECT EXAMINATION:

Q. Did the collapsed condition of the boiler to which you have referred materially affect the quantity of steam that the boilers made or the speed of the vessel? 458
A. No.

Q. State how deep the indentation of this collapse is. A. It is between a quarter and three-eighths of an inch.

Q. Over how large a square surface do these different degrees of indentation exist? A. I can't exactly say, because I have not measured it.

Q. State about the breadth and length. A. Five feet by two.

459

RE-CROSS EXAMINATION by Mr. Putnam:

Q. When you give that indentation or that measurement do you mean that is in one furnace only? A. That is in one of the boilers; and that is the largest; the other is very small.

Q. Which pitch is that that is five feet by two? A. That is in the starboard boiler, in the middle part.

Q. What is the size, if any, that the outside furnace of the starboard boiler is collapsed? A. In that starboard furnace there is a little collapse, a little less than 460
the other.

Q. How is it in the port furnace of the starboard boiler? A. That is not to be seen at all.

Q. Is there an indentation in the furnaces of the port boiler? A. There is an indentation in the port boiler in the starboard furnace.

Q. Is it about the same size as you have mentioned of the other boiler? A. About the same, a little less.

Q. Is there any collapsing or sinking down in the other furnaces of the port boiler? A. No.

461 Q. And about how wide is this one that you spoke of, the starboard furnace of the port boiler? A. It is only a foot square.

Q. About how long is the furnace? A. About nine feet.

Q. And about how wide? A. It is twenty-six inches right across.

Q. The length of the nine feet is right? A. Yes, sir, but the diameter of the furnace, that is twenty-six inches.

462 Q. How much is the top of the furnace collapsed down in this place that is a foot square? A. That indentation is on the side just alongside the fire box and the indentation is a quarter of an inch; you can hardly detect it.

Q. What is the cause of that collapse or coming in of the sides of the furnace? A. The only thing I can think of, and I have talked with other engineers about it, is that it is due to the bad cylinder oil coming through the condenser into the boiler and stopping on
463 the roof of the furnace, preventing the water coming through and heating it up.

Q. When you say it prevents the water coming through you mean it forms a scale? A. I mean that the fat stops there like a scale on there.

Q. Were you ever chief engineer of a vessel before the 13th of June? A. Two years as chief engineer.

Re Direct Examination:

Q. How long have you held a certificate as en-
464 gineer? A. This is the eighth year.

Q. What is the length and breadth of the next largest depression caused by the collapse? A. One foot by 10.

Q. What is the length and breadth of the next largest? A. I can't very well say exactly, because I have not actually measured it.

Q. Approximately? A. It is about a couple of inches each way.

Q. How many of these indentations were there? A. Six in all.

Q. What are the lengths and breadths of the other two? A. It varies between the largest one, three feet to one foot. 465

Q. Between three and one feet long, and what width? A. One foot at most in width.

Mr. Putnam: No answer has been served, and we do not know what defences will be set up.

Proctor for claimant states that the steamship *Ceres* makes a counter-claim in this action against the charterers' claim for two weeks lay up at Mobile early in the month of January, which the steamship claims was not justified by the terms of the charter party under the circumstances; and for a second counterclaim demands £50 difference between the hire called for by the charter party with Wessels and the re-charter of the vessel to Dumois when she was thrown up by Messrs. Wessels & Co. without thirty days notice, and also make a counterclaim for the days used, two or three days hire of the steamer on the 15th day of May; and makes further claim for the replacing of an iron bulkhead taken out in Number 1 and 2 hold at the request of the charterers, and upon their undertaking to repay the expense of replacing on the termination of their charter party. 466 467

Re-Cross Examination by Mr. Putnam:

Q. Turn to the log book on the 18th of May and see if you have any entries in the enginer's log respecting the repairs to the boiler? A. Yes; I can state exactly what day the work was done; all the time laying at the dock. 468

Q. Can you state the first day you went in dock? A. I believe we came in on the 17th, but I can't say, certainly.

Q. What entries have you regarding the repairing of the boilers? A. The entry is as follows (translation being made by the captain) "Rengjort," which I translate as cleaned boilers and tightened a few tubes

469 and put in 17 rings in the same amount of tube ends and shifted propeller.

Q. When were those repairs finished? A. It was the last day we were in dock.

Q. Can you tell when? A. We came in the 17th; about the 25th; but I can't state exactly.

Q. What is the first entry you have there of getting up steam? A. 31st of May.

Q. So that you did not have steam up during the time from the 17th of May to the 31st of May, accord-
470 ing to the log book? A. Not any more steam than we had in the donkey boiler.

Q. How much of that fourteen days were you overhauling and repairing and cleaning the boiler and machinery? A. Fourteen days; all the times we lay in dock we had to do with it; I can't exactly say what time.

Q. What do you mean by putting rings on the tube ends? A. Putting in a ring on tube end means that the tubes are getting thin, wearing off, and we have to
471 put in ends of the tubes and get them tight, and we have to put these rings on to stop that.

Q. Were those seventeen tubes plugged up before the rings were put in? A. No.

Q. Were they leaking? A. Yes, sir.

CAPT. SVENSSON, recalled.

By Mr. Convers:

472 Q. Look at your log book and state the date when the last inward cargo was discharged. A. About midnight, between Tuesday, 17th, and Wednesday, the 18th of May.

Q. What was done with your vessel the next day? A. We towed her over to the dry dock.

Q. From what place, where had she discharged her cargo? A. At Wessels' pier; towed her from Wessels' pier over to dry dock at Brooklyn side, 26th street; we went on dock at 3 o'clock P. M. that same day (the

18th); we commenced to work on the repairs the same 473
day; we went off the dry dock Wednesday, the 25th of May, at 2 P. M., and we started the same day to fulfil the charter to H. Dumois & Co.

Q. Was any change made in the *Ceres* at the request of the charterers while she was running under the Wessels charter with respect to the bulkhead? A. On the first voyage we arrived here in New York they told me that they had to have that bulkhead removed; whereto I refused; couldn't do it; the bulkhead is between the lower forward and lower main hold; that is, 474
between 1 and 2; I refused first, but afterwards I was authorized from my owners to do everything to satisfy the charterers here in New York. I went to Lloyds' Surveyor and asked if there was anything in the way of taking off that bulkhead; he went and inspected the vessel, and after his inspection he said we could do it, but we had to put it back again to go home; it was put up according to Lloyds' rules, and I told the charterers that if they were going to remove that they would have to put it back at their own expense—to re- 475
store it at their own expense, at the termination of their charter, after they got through with the vessel.

Q. What did they say about that? What was done? A. Then it was taken off; the whole plate was taken out that bulkhead, about four feet; there is one plate about three feet wide by 26 feet long; it is athwartships. It was to be taken away for the purpose of giving ventilation to the fruit, and, according to the Wessels, they told me it gave better air to the bananas.

Q. Did they make any objection to your statement 476
that it would have to be restored at their expense? A. They said "All right, Captain, we will do that, or we will look after that, something to that point.

Cross-Examination by Mr. Putnam:

Q. Who did you have that conversation with? A. I had that with Mr. C. Wessels.

Q. He is not here present? A. Not here present; I am not sure, but I believe Mr. G. Wessels was on board at the time.

477 Q. Was the vessel at the wharf? A. Lying at pier 3, Wessels' pier.

Q. There are present now Mr. Gerhard Wessels and Mr. Henry Wessels? A. Yes, sir; but the conversation I had was with Mr. C. Wessels.

Q. You can't testify that either of these men were present at any conversation about that time? A. We had a conversation; but I couldn't get a satisfactory reply about that.

Q. Not with either of these gentlemen? A. The
478 same thing was with Mr. C. Wessels, and he said he would look after it.

Q. That was all he said? A. Yes, sir.

Q. Who took down that plate? A. A man called Phillips.

Q. What did it cost to take it down? A. I can't exactly say, but Wessels has got the bill, I believe; they paid for it.

Q. He paid for it? A. I don't know, I believe so.

Q. You didn't pay it? A. I did not.

479 Q. Have you put the plate back? A. No, sir; it is not back yet.

Q. It is still down? A. It is still down.

Q. You expect to carry your bran over with that plate down? A. I don't know; I expect we will have ourselves to put it back again.

Q. Have you asked Wessels or Mr. Phillips to replace that plate? A. No, because I understood they would not do it.

Q. You understood they would not do it? A. Yes,
480 I understood it so; that was the understanding I had with Mr. Wessels in the office, Mr. G. Wessels, that he would never do it.

Q. When was that? A. That was when I returned from the Gulf of Mexico; it was about April.

Q. Before this charter was discontinued? A. Yes, sir; before this charter was discontinued.

Q. With whom did you have that conversation? A. I had it with Mr. G. Wessels; I can say that when I was sailing before I went down with that charter Mr. Wessels or Mr. Andrew Phillips came with his

bill, Mr. Phillips being an iron ship repairer in New 481
York, he came with the bill to me for taking down that bulkhead and told me that I should pay it. I told him to go to Messrs. Wessels; he went to Messrs. Wessels; after that Mr. Phillips brought the bill again and said that I had to pay it; then I wrote to my owners about it, and they told me as they had never given me any order to take the bulkhead down, and that Wessels had taken it down, and that they should pay the bill for it, and that is all I know.

Q. When was that that you sent the bill home? A. 482
I can't exactly say.

Q. Some time last fall? A. Yes, sir; I believe so.

Q. Mr. Phillips presented the bill soon after he did the work, didn't he? A. He presented it about two weeks after he did the work.

Q. Can you remember how much the bill was? A. I can't exactly say.

Q. According to your recollection you never paid it? A. No, sir; I never paid it.

Q. You are carrying a cargo of bran now, are you 483
not, to Copenhagen, or you will carry such cargo? A. Yes, sir.

Q. You will leave that open to ventilate the grain? A. We don't need any ventilation.

Q. Anyhow you are going to carry it? A. I have to do it. I am going to put a bill in to Wessels when I get home, as I am going to get the work done there.

Q. You don't know whether your owners will consent to it; and if they will not you will have to put your hand in your pocket and pay it? A. Yes, sir; 484
either I will or Wessels.

Q. Or the owners, one of the three? A. Yes, sir; we will find out some time. Of course, if I had known Mr. Wessels would never pay that I would have had the charter discontinued and would have let them take another vessel rather than take that bulkhead out.

Q. You say that has never cost you anything? A. They paid, but what trouble will I have when I get home with Lloyd's people.

Q. What became of the plates that you took out of

485 that? A. They are laying in the ship; several rivet holes are broke, and, of course, that plate can't be used to put new rivets in.

Q. Can't you patch it just as you did the boiler? A. Not according to Lloyd's rules. You see, if you go to patch it it would cost as much as a new plate, and in some cases you would have to rivet it twice over. I believe Mr. Wessels knew that, because Mr. Phillips told him.

486

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

GERHARDT WESSELS

vs.

487 The Steamer "CERES," and the SYDSVENSKA ANGFARTYGS AKTIEBOLAG of MALMOE, SWEDEN.

THE SYDSVENSKA ANGFARTYGS AKTIEBOLAG of MALMOE, SWEDEN,

vs.

488 GERHARDT WESSELS and others.

Deposition of GUSTAF HOLMQUIST, taken before George A. Baker, Esq., Notary Public, October 23, 1893.

Present—MR. PUTNAM for Wessels & Co.
MR. KIRLIN for the *Ceres*.

GUSTAF HOLMQUIST, being duly sworn and examined as a witness for the *Ceres*, testifies:

By Mr. Kirlin: 489

Q. What is your age? A. 36.

Q. What is your occupation? A. Mate.

Q. How long have you followed the sea? A. Since I was 15 years of age.

Q. What kind of a certificate do you carry? A. Captain's.

Q. How long have you had that? A. 8 years.

Q. Were you on the *Ceres* during all the time the vessel was under charter to and making voyages for the Messrs. Wessels? A. Yes, sir. 490

Q. In what capacity? A. Chief mate.

Q. On the last two voyages which were those from Colon to New York, did you take the steamer's draft on leaving Colon? A. Yes, sir.

Q. Where did you note it first? A. Down in Colon so soon as the cargo was in.

Q. Where did you make a memorandum of it? A. In a pocketbook I had.

Q. Have you that here? A. No; I haven't got it, but then I put it in this scrap log. 491

The scrap log in lead pencil from September 23, 189 , to August 9, 1892, is produced in answer to libellant's call, on page 25 of Svensson's deposition.

Q. On what date did you enter the steamer's draft on leaving Colon, on the first of the last two voyages? A. The 11th of April.

Q. What was it? A. 16.6 aft and 13.6 forward.

Q. What had been the draft on the voyage from 492 New York down to Colon on the 26th of March? A. 17.1 aft and 12 forward.

Q. Is the entry in the scrap log of the draft in your handwriting? A. Yes, sir.

Q. On both occasions? A. Yes, sir.

Q. See what the draft was on leaving New York for Colon on the second voyage? A. 17.1 aft and 12 forward the 23d of April.

Q. What was the draft on leaving Colon for New

493 York on that voyage? A. 17 feet aft, 14.6 forward, May 7th.

Q. Are both those entries in your handwriting? A. Yes.

Q. Did you take the draft on all those occasions, personally? A. Yes, sir; that is my place.

Q. Are those figures right? A. Yes, sir.

Q. What is the deep water draft of the steamer? A. 15.10 forward.

Q. Is that the mean draft? A. Yes.

494 Q. Extreme mean draft? A. Yes.

Q. What is the lowest you are allowed to load her deep draft? A. 15.10 Lloyd's Rules.

Q. What is the steamer's mean draft light? A. 11 feet.

Q. How many tons does that allow? A. That is about 60 tons of coal and the water ballast.

Q. What is her draft with nothing but a cargo of fruit? A. 14 feet.

Q. Mean? A. Yes, sir.

495 Y. Have you made voyages in her with nothing but fruit this year? A. Nothing but fruit this year.

Q. And the mean draft with full cargo of fruit has been what? A. 13 and 14.

Q. On the last two voyages that you made under the Wessels charter did you have anything aboard except fruit? A. Yes, sir; general cargo.

Q. How much? A. I can't say how much.

Q. What did it consist of? A. Coffee and hides and cocoanuts.

496 Q. On both voyages? A. Yes; there was coffee on both voyages.

Q. On the voyage beginning the 11th of April, what kind of weather was experienced? A. Rough.

Q. Is the logbook in your handwriting? A. Yes, sir.

Q. Is it an exact copy of the entries in the scrap log? A. Yes, sir.

Q. Who made the entries in the scrap log, whose handwriting are they in? A. Some are the captain's and some are mine.

Q. And they have been literally transcribed into the 497
log? A. Yes; and that is mine altogether.

Q. That is altogether in your handwriting? A. Yes, sir.

Q. What is there in Libellant's Exhibit A for identification that is not in the other? A. The days in port I put it right in there what we have been doing in port.

Q. That is different in Exhibit A from what it is in the scrap log? A. Yes, sir.

Q. You never put any days in port in the scrap log? A. No; I put it directly in Libellant's Exhibit A. 498

Q. Is there anything more in the way of observations? A. No; the observations are here in both.

Q. Otherwise they are just alike? A. Yes, sir.

Q. Is the daily record of the weather shown in the log at sea? A. Yes, sir.

Q. These entries are all in your handwriting? A. Yes.

Q. Do these descriptions of the weather from day to day accurately show what it was? A. Yes, sir.

Q. Are they all right? A. Yes, sir. 499

Q. All true? A. Yes, sir.

Q. Does the log show the direction of the wind and the condition of the sea? A. Yes, sir.

Q. And the speed you made? A. Yes, sir.

Q. What was the condition of the weather on the last voyage? A. Partly rough and partly moderate.

Q. Are the entries in the log about that voyage all in your handwriting? A. Yes, sir.

Q. Do they show what the weather was each day? A. Yes. 500

Q. And the sea? A. Yes, sir.

Q. And the wind? A. Yes, sir.

Q. And the speed? A. Yes, sir.

Q. Are those entries all true? A. Yes, sir.

Q. The log shows what days were rough and what days were moderate, does it? A. Yes, sir.

Q. What was the condition of the awnings that were used on board the vessel to protect the fruit from storm? A. Good.

501 Q. Did they leak? A. No, sir; not to my knowledge.

Q. Did you ever hear of any damage from leakage? A. No, sir; never heard a complaint about them.

Q. Was there a supercargo on board? A. Yes, sir.

Q. On both voyages? A. Yes, sir.

Q. Did he make any complaint about the condition of the awnings to you? A. No, sir; never mentioned them.

Q. When did you first hear that there was any com-
502 plaint about the awnings? A. I haven't heard any complaint about the awnings except what the captain was telling me on board; that is all.

Q. When was that? A. It was last year, going home, when we left the States.

Q. After you had made the last voyage? A. Yes, sir; after we had made the last voyage for Mr. Dumois.

Q. After you had made the last voyage on a subsequent charter? A. Yes, sir.

Q. Did you come out here with the steamer from
503 Sweden? A. Yes, sir.

Q. Where did you get those awnings? A. In London.

Q. Were they new then? A. Yes, sir; new on board the ship; came from Newcastle, made in Newcastle.

Q. Were they large enough for the hatches? A. Yes, sir.

Q. What do you say about the fit; were they properly set, or were they set too far forward or too far
504 backwards? A. Properly set, sir.

Q. Could you have set them any differently? A. Yes, sir; we did according to the weather.

Q. I mean fore and aft? A. Fore and aft they were set the proper way, just over the hatches, the cover put fore and aft; can't be set in any other way.

Q. When you move them for the weather, what parts of them do you move? A. The wings.

Q. Did it rain during any of the period of loading at Colon on these two last voyages? A. Yes, the last voyage it was squally.

Q. Where were you loading? A. The last voyage? 505

Q. The time it was squally? A. Alongside the wharf in Colon.

Q. How was the height of the wharf with reference to the deck of the vessel? A. It was uneven on account of the water rising and falling there, the tide.

Q. Did you have the awnings up at that time? A. Yes.

Q. How were the sides? A. Even, set up.

Q. What were they set up for? A. To let the men work on the deck passing the fruit into the ship. 506

Q. Was the supercargo there on deck while this was taking place? A. Yes, sir.

Q. Did he make any objection to the way the awnings were then? A. No, sir.

Q. Who placed the awnings that way? A. A sailor and me and the supercargo; we all of us helped.

Q. Could you have put the awnings down so they would have been on a slope while you were loading? A. No, sir.

Q. Why not? A. Because they couldn't pass the 507 fruit in.

Q. Was any damage done to the cargo from leakage at that time? A. No, sir.

Q. Did you hear any complaint made about the awnings having leaked and wet the bananas? A. No sir, never.

Q. Were the bananas wet as they came aboard? A. Passing them from the car sometimes they might get a little wet, but that doesn't hurt them.

Q. How far did they have to be passed through the 508 rain? A. About ten feet, I should say.

Q. Have you used those same awnings since the Wessels' charter? A. Yes, sir.

Q. In carrying fruit? A. Using the same awnings this year, and we have got them yet.

Q. How many voyages have you made carrying fruit since you left the Wessels charter? A. I think it was four last year and eleven this, something about fifteen voyages since.

509 Q. During those fifteen voyages have the same awnings been used? A. Yes, sir.

Q. In the same condition? A. Yes, sir.

Q. Have they been changed in any way? A. Just patched up.

Q. Set the same? A. Yes, sir.

Q. What was patched? A. Mended; when it blows, when it is squally, we have to turn them down, and then a flaw of the wind may come and blow them to pieces like any other sails, and then we have to re-
510 pair them again.

Q. Were there any holes in them while you were under the Wessels' charter? A. No, sir; they were new.

Q. Have you had any damage from water passing through those awnings on these last fifteen voyages? A. No, sir, never.

Q. Have you carried anything else but fruit on those fifteen voyages for Dumois? A. No, sir.

Q. On these voyages you say your draft has been
511 much lighter? A. Yes, sir.

Q. Fourteen feet? A. Fourteen; sometimes less.

Q. Did it rain while you were discharging either of the last two cargoes in New York? A. I can't remember.

Q. Was there a supercargo on deck at that time? A. Yes, sir; he was moving around the deck; sometimes he had to go down in the hold, according to Mr. Wessels' order, and sometimes he was on deck.

Q. But he was always there? A. Yes, sir.

512 Q. Did he make any objection to the way the awnings were treated? A. No, sir.

Q. Whether it was raining or not? A. No, sir.

Q. Mr. Mowbray says the awnings weren't large enough, was that so? A. We can't have them any larger.

Q. Why not? A. Because they cover those hatches so close as they can when it is bad weather to get them stretched down tight to the deck.

Q. In what condition did the fruit come on board

at Colon on the last two voyages? A. Partly ripe 513
and partly sunburned; it was in bad condition.

Q. On the voyage beginning April 11th where did you load from? A. Loaded up in the river.

Q. Where did you take the fruit from? A. From the beach, come out in small canoes alongside the ship.

Q. Did you notice the condition of that fruit particularly? A. Yes, sir; because I counted them in at the main hatch at the time.

Q. You tallied? A. Yes, sir.

Q. What appearance was there about it that indi- 514
cated it had been sunburned, to you? A. Laying too long on the beach.

Q. What was the appearance of the fruit? A. It was sunburned.

Q. What is the appearance of sunburn? A. Turning black and the skin dries up.

Q. Was all the cargo there when you came alongside the ship? A. Yes, sir; we wasn't alongside, we was anchored out in the river.

Q. Was the cargo all there then? A. Yes, sir; it 515
was lying on the beach then.

Q. Was it protected? A. No, sir; not to my knowledge, because there was no shed around or anything; it was open, flat.

Q. How many voyages have you made with fruit altogether? A. 24.

Q. What was the condition of the fruit on those two voyages from Colon, as compared with the other 22 voyages? A. Awful bad, sir.

Q. In what respects? A. Because it has been lay- 516
ing too long on the beach and the fruit was ripe taken on board the ship.

Q. Too ripe for a voyage of that length? A. Yes, sir.

Q. What is the length of the voyage from Colon as compared with other voyages you made, both under the Wessels' charter and the Dumois charter? A. Under the Dumois charter it is about 3 days' difference more for vessels.

Q. How much of the fruit do you say was over ripe

517 for the voyage, or sunburned on the voyage beginning April 11 at Colon? A. About one-third of it was too ripe to take from there.

Q. Had it begun to get yellow? A. Yes, sir; many.

Q. On the last voyage you said you loaded from a wharf? A. Yes, sir.

Q. What was the condition of that fruit? A. Ripe.

Q. How much of that had begun to get yellow? A. About one-third.

518 Q. Was any of it sunburned? A. Yes, sir; some of it.

Q. Did you make any objection to taking any of it aboard? A. Yes, sir; that is, a whole lot, and they took the fruit ashore and passed it behind a truck and passed it through the truck again on board the ship, and I called Mr. Henry Wessels—told him about it; I say "I refused that fruit and they passed it right in again through the car; it looks as if it was some other," and he says, "Never mind what it is; let it

519 pass."

Q. To make it look as if it was some other fruit? A. Yes, sir.

Q. Trying to deceive you by putting it through the car, you mean, again? A. Yes, sir.

Q. You called Mr. Henry Wessels' attention to that? A. Yes, sir; I did.

Q. What did he say? A. He said, "Never mind what it is; let it pass."

Q. How did that fruit turn out on both those last

520 voyages? A. The last voyage it was bad; the voyage before it wasn't so bad as the last voyage.

Q. What do you mean by "bad," over ripe? A. Yes, sir, and rotten.

Q. Was there a supercargo with the fruit on both voyages? A. Yes, sir.

Q. Did Mr. Henry Wessels come with the cargo on the voyage when you had that conversation with him? A. The last, yes, sir.

Q. How many voyages did you make from Colon altogether? A. Two.

Q. Only those 2? A. Yes, sir. 521

CROSS-EXAMINED by Mr. Putnam:

Q. For whom has the *Ceres* been carrying fruit this year? A. For Mr. Dumois.

Q. Are the bulkheads in the hold the same as they were when they were carrying fruit for Wessels? A. Exactly, sir.

Q. Has there been any bulkhead replaced that was taken out when they were carrying fruit for Wessels? A. Yes, sir; between the fore and main hold, lower 522 hold was taken out two plates in there when we was carrying fruit for Mr. Wessels.

Q. Have they since been put in? A. Yes, sir; temporarily.

Q. When was that? A. That is more than I can tell, because I wasn't in the boat then, but we had to take it down now coming out.

Q. It is now taken out? A. Yes, sir.

Q. You never saw it in, did you? A. Yes, sir.

Q. When did you ever see it in? A. So soon as I 523 came in the boat.

Q. Where? A. In Grimsby.

MR. KIRLIN: I will state on the record, that in the cross libel we propose to withdraw the claim for replacing the bulkhead.

Q. Do you keep any book in which you enter the tallies of cargo that you take in? A. Yes, sir; I have some.

Q. Have you got your book showing your entries of 524 cargo on April 11, 1892? A. No, sir, I haven't. I had that book and the supercargo came and told me that Mr. Wessels wanted to see it, and he took the book up to show how many bunches we got in, and he returned the book, and after that I done away with it.

Q. When was it that he took the book and returned it? A. On the first voyage from Colon, because there was some dispute about tallying too many; so, to be sure, he took up my book to him and showed him.

Q. That was the first voyage? A. Yes, sir.

525 Q. Did you use the same book on the second voyage? A. Yes, sir.

Q. What did you do with it then? A. I throwed it away when I left the ship, when I came home last year, because the book was no good.

Q. When you came home; you mean when you left the *Ceres?* A. Yes, sir; I changed into the other boat, the *Eos;* I changed when I came from Malmoe last year.

Q. Then you threw the book away? A. Yes, sir.

526 Q. What time did you leave New York to go back to Malmoe? A. I think it was about the 24th of August; I can't say exactly the date.

Q. Up to that time you had the book? A. Yes, sir.

Q. The 24th of August, 1892, you mean? A. Yes, sir.

Q. Do you remember when the logbooks were sent here to this office? A. It was some day in August, but I can't say exactly the date.

Q. Have you any entry in any book, the scrap log
527 or official log, of any bad condition of the fruit when it was put aboard on either voyage? A. No, sir, I never put that in because we had a supercargo on board that was responsible for that.

Q. Have you any entry of your rejecting any fruit? A. No, sir, never put that in in them books.

Q. When did you first make any statement to any one in connection with this case, that the fruit was bad when shipped? A. The first I told the supercargo, the first voyage when he was down, and I told Mr. Henry
528 Wessels the day we was loading.

Q. You have stated that; but when did you ever first make any statement to the lawyers in this case, or to the captain, that the fruit was bad? A. Last Saturday.

Q. Was the fruit in about the same condition when you received it aboard at Colon on both voyages? A. About the same.

Q. But the last voyage it was very much more rotten and black when it got here than it was the other voyage? A. Yes, sir; because the boat was too full;

the fruit was stowed close up under the beams so there 529
was no air come through there.

Q. Were the hatches open about the same way on the two voyages? A. All the same, exactly.

Q. And the awnings were the same? A. Exactly, except we have to shift them according to the weather.

Q. The weather was about the same on the two voyages? A. It was more rough the first one; the weather was better on the last voyage than on the first one.

Q. When did you leave Colon on the first voyage? 530
Just look at the scrap log. A. The 11th of April.

Q. What hour? A. 30 minutes past 12.

Q. There was a breeze blowing then, wasn't there? A. Yes, sir.

Q. How soon after you left port did you notice a breeze blowing? A. Right away; so soon as we come around.

Q. What is the Swedish word for a "gale"? A. That is sturm.

Q. Have you any entry of a gale during that voy- 531
age? A. No, sir; I don't know exactly what you mean in English; whether the gale come before the storm or after the storm.

Q. Have you any entry of a storm or gale for that voyage? A. There is "storm."

Q. Give us the day? A. Monday, April 18th.

Q. Will you give the whole entry that you have as to weather, for that watch or for that day? A. "Storm with high sea; water comes on deck."

Q. What watch is that? A. On the 12 and 4 after- 532
noon watch.

Q. What is the entry in the next watch? A. "The same, with squalls and lightning and thunder."

By Mr. Kirlin:

Q. What does "the same" mean? A. "The same" as the watch before.

By Mr. Putnam:

Q. What is the entry for the next watch; that is the

533 word "same," isn't it? A. Yes, sir; but the sea is more cross.

Q. Haven't you got the entry "Same"? A. Not here; the whole line is put out; it means "The same;" it is not there (indicating Exhibit A), but the sea is more cross.

Q. Then you haven't got simply the entry "The same"?

Mr. KIRLIN: Read the third entry.

THE WITNESS: (Reading.) "Storm, with variable
534 wind and high cross sea."

Q. Just see if that is entered in the log that way? A. No, sir; but "The same" is.

Q. The word "Same" is all that is in the log, libellant's Exhibit A for identification? A. Yes, sir.

Q. Whose handwriting is this? A. That is mine.

Q. That is not correctly copied from the scrap log, is it? A. Not exactly; but that is the same meaning of it: I have only to put the word "same" in; they are alike, those watches.

535 Q. You think they are alike? A. Yes, sir.

Q. You think the weather was the same, do you? A. Yes.

Q. What is the entry for the first watch on the 19th of April? A. That is the same as the other.

Q. What is the entry for the second watch? A. That is "The wind falling a bit."

Q. The next entry for that watch is "Fresh breeze with clear sky," isn't it? A. Yes, sir.

Q. How many knots did the ship make on that day,
536 18th and 19th? A. 247 Monday afternoon and Tuesday forenoon.

Q. That is from noon to noon? A. Yes, sir.

Q. That is according to your log? A. Yes, sir.

Q. Have you any other day on that voyage, in which you have an entry of "Storm"? A. "Stiff breeze."

Q. But you have no entry of "Storm" any other day? A. Stiff breeze is to storm.

Q. Have you any other day on that voyage, in which you have an entry of "Storm?" A. No, sir; "Stiff breeze."

Q. In what watch of the 11th of April did you put 537
down the draft of the steamer? A. On the second watch.

Q. About what hour in the day? A. That is between 4 and 8.

Q. How far were you out to sea then? A. We left at half past 12, and between 4 and 8 I put it in.

Q. That is about how many miles out to sea when you entered that? A. I might have entered it at 4 o'clock when I get into the captain's chart room.

Q. Then it was some 40 miles out to sea? A. Some- 538
thing like that.

Q. Was it still blowing a fresh breeze at that time? A. Yes, sir; but I took the draft before I left port and put it in my pocketbook and kept it, because I can't always get at that book when the captain is ashore or away, the captain keeps that book in the chart room.

Q. When did you write the first watch in the book here, between 12 o'clock and 4? A. The captain done that. 539

Q. That isn't your writing? A. No, sir.

Q. Is there anything on that page in your handwriting, except the draft? A. Between 12 and 4 the next day.

Q. All the rest is in the captain's writing? A. Yes.

Q. Where is the pocketbook in which you entered that draft? A. That is the same book I kept for everything; I kept for the cargo and all.

Q. Are you sure that you made that entry in the scrap log the same day that it is put here, that is, the 540
second watch of the 11th of April? A. Yes, sir.

Q. Can you tell why it is that there is no such entry copied into the official log for that day? A. Because we left that day; that is the afternoon watch.

Q. So in the official log there is no entry on that day at all? A. No, sir, because that is so soon as I got the log in I put it in here.

By Mr. Kirlin:

Q. On the previous day? A. Yes, sir; that is the

541 same day, only this is the forenoon and this is the afternoon.

By Mr. Putnam:

Q. Then you put it first in this book, Exhibit A? A. Yes, sir.

Q. When was this entry written up in the official log Exhibit A? (Referring to the entry on the 11th of April.) A. The same day as we left, because I always make up that book in port.

542 Q. Then that was written up in port, was it? A. Yes, sir; and this one we only keep at sea.

Q. Isn't it the fact that that draft wasn't entered in the scrap log until some days afterwards? A. No, sir; I will swear that I entered that the same day I got hold of that book.

Q. When was the day that you first got hold of that book? A. So soon as we got to sea the captain opens the doors.

Q. What was the object of putting it in the scrap
543 log if it was already entered in the official log? A. Because the captain wants to see it.

Q. Doesn't he see the official log? A. Yes, sir, when he calls for it; I keep that book myself.

Q. Where did you stand when you took the measurement of the draft forward and aft? A. Over the bow I can stand on the deck; but aft it runs in; I have to hang over the side on a rope.

Q. I ask you how you got that that day? A. That is more than I can tell, because I might be in a boat
544 and see it at the same time.

Q. Have you any recollection? A. No, sir.

Q. How you did it? A. No, sir, I haven't; because if we got our boat out, I go in the boat, and if we haven't I go over the side on a rope.

Q. You have no recollection now of going in a boat, have you, to take the draft? A. No, sir, I can't tell which.

Q. Have you any recollection of going over the side in a rope? A. Yes, sir, I believe.

Q. Wouldn't that be an unusual thing to do when

you are in port, with your boat going back and forth 545
to the shore? A. No; the captain might have the boat ashore to clear the ship—and I take it—and so soon as he came on board we up with the anchor and go, when we are in the fruit business.

Q. Isn't it easier to go down the side into a boat than it is to be lowered down in a rope? A. It is about the same; because I stand on the side when I go down on a water-board.

Q. According to your recollection you looked over the bow and you were lowered over the stern; isn't 546
that right? A. Yes, sir; there is a thing that goes on the main deck—I don't know exactly what you call it in English—but it comes out a bit so you can stand with one foot on it and hang over the rope and look at the vessel, what she is drawing.

Q. When you speak of standing and looking over, you mean forward? A. Forward; I can stand on the deck because the vessel is built up and down there.

By Mr. Kirlin: 547

Q. Do you mean a round iron outside of the bulwark? A. Yes, sir.

By Mr. Putnam:

Q. That round iron you speak of outside the bulwark, is which end of the ship? A. It goes all around; they call it moulding I think in sailing vessels.

Q. When you stand on that iron moulding and look down, do you mean towards the bow or towards the stern? A. Towards the stern.

Q. Then you are not lowered down on a rope? A. I 548
have to hang on a rope because the vessel is built that way (Indicating the over hang).

Q. Then you get over on the counter and stand on what would be a covering board of a sailing ship is that right? A. I won't say exactly, because there is a moulding goes right around the main deck of the ship outside; I can't say exactly what you call it in English.

Q. That is the way you think you took this draft aft? A. Yes, sir.

549 Q. And according to your recollection you didn't go in a boat either to the bow or to the stern? A. No.

Q. Is that true of all the other drafts that you have here; the next voyage as well as this? A. The next voyage I could stand on the wharf, because we were loading alongside the wharf.

Q. What is your recollection as to how you took the draft on the 23d of April, leaving New York? A. I was standing on the pier.

Q. You looked down? A. Yes, sir.

550 Q. Then leaving Colon on the 7th of May, how did you take the draft? A. Standing on the wharf.

Q. Did they lay alongside the pier then? A. Yes, sir.

Q. Look at either of these logs and say when they completed loading on the 22d of April, and when you started on the voyage? A. We loaded some cargo that day; I haven't put down when we finished.

Q. When did you start on the voyage? A. At one A. M., 23d of April, in the morning.

551 Q. Were they putting in cargo the night before? A. If they had been taking in any cargo it must have been the bunkers.

Q. As matter of fact, as soon as they were loaded they went to sea, didn't they? A. Yes, sir; we got the cargo in there and went away, because I think it was foggy during the night.

Q. Started at one o'clock at night? A. Yes, sir.

Q. You couldn't very well see the figures of the ship's draft between midnight and one o'clock, could

552 you? A. Well, we got that in the afternoon and then we put the hatches on and during that time I have been looking what she has been drawing in the afternoon when we got the cargo in.

Q. Haven't you just said that they were taking in cargo during the night? A. That is the night before.

Q. Do you mean to say that they remained all one day loaded and ready for sea and didn't go? A. No. sir; that day we had been taking in cargo, if they was taking in any the night before, it was bunker coal and that isn't cargo; that is for our own use.

Q. According to your log can you tell when the ship 553
was loaded and ready for sea? A. I can't say exactly; but it is Friday, the 22d of April.

Q. When was the ship loaded and ready for sea? A. We have been ready that day; but I can't say the hour because I haven't marked it down.

Q. According to your recollection don't you recollect that they were taking in cargo and coal and as soon as they were ready they always went to sea; never waited after they were ready, did they? A. That is more than I can recollect, sir. 554

Q. About what time in the day or night was it that the steamer left Colon on the last voyage from New York? A. 7.45 Saturday afternoon.

Q. Do you remember whether your lights were set at that time, when you started? A. That is more than I can say; that is according to the sun.

Q. Do you remember whether the sun was up at that time or whether it was after sunset? A. My belief is this, the light was set.

Q. According to your best recollection at none of 555
these three times, did you go in a boat alongside the vessel to take her draft? A. No, I stand on the wharf.

Q. You stood on the steamboat or on the wharf? A. Yes, sir.

Q. Did you enter in your log the draft of the steamer when she arrived in New York from the first voyage to Colon, reaching here the 18th or 19th of April? A. No, sir; I don't because that is the day we anchored at Staten Island.

Q. Did you make any entry of the draft of the 556
Ceres on arrival in New York on the 19th of April, either on your logs or in your private book? A. No, sir.

Q. Do you know whether the captain did? A. That is more than I can tell.

Mr. Putnam: We call attention to the abstract of the log, furnished to the charterers by Captain Svenssen, to show that they reported fourteen feet forward and seventeen feet aft on arrival in New York the 19th of April, and ask if there is any entry in any

557 log to show any such draft as that at any time on that voyage, for the purpose of affording the witness an opportunity to explain it.

THE WITNESS: No, sir; I never put it in the log book when we arrive in port.

Q. About how much generally does the steamer lighten up her draft on the homeward voyage of eight or nine days? A. About a foot.

Q. Don't you make any entry of the draft on arrival on any voyage? A. No, sir, never; because we
558 needn't do it by our log, only when we leave port.

Q. Do you know how much your steamer draws empty? A. Yes, sir; about eleven feet average.

Q. Mean draft? A. Yes, sir.

Q. How much forward and how much aft? A. About thirteen feet aft and eleven forward.

Q. How much draft does she require aft to cover her propeller? A. Thirteen feet.

Q. That is, she requires thirteen feet aft to cover the propeller? A. Yes, sir.

559 Q. Do you know what the diameter of the propeller is? A. No, sir.

Q. Do you know, on the first trip from Colon leaving the 4th of April, what was the condition of your water ballast tanks; whether they filled or not? A. No, I can't say exactly.

Q. How would that be entered; in what log books? A. In the engineer's; he should enter it because he had to empty it out.

Q. You don't have anything to do with that your-
560 self? A. No, sir.

Q. Have you any recollection whether they were filled or whether they were pumped out? A. No, sir; I can't say anything about that.

Q. That isn't in your department? A. No.

Q. Where are the water tanks located in the ship? A. On the bottom; all of them.

Q. The whole length of the ship? A. Yes, sir.

Q. Do you know how many tons she carries of water ballast? A. I could say if I had my book with me, but I haven't.

Q. What book is that? A. A little book I have on 561
board I keep of the boats so I can see what she is drawing.

Q. That is a cargo book? A. No, sir; it is only for myself for loading when we are in England, to see how much we have on board.

Q. Is that book on board the ship now? A. Yes, sir.

Q. It isn't the one you threw away? A. This is a new one; I have got it on three boats.

Q. This book has no entries about her water ballast 562
when she was under the Wessels charter, has it? A. No, sir.

Q. Don't you give orders from the bridge to the engineroom when to fill the tanks and when to empty them, in order to trim the ship? A. When I get the order from the captain to do it.

Q. You or the captain give the order, don't you? A. Yes.

Q. Have you any recollection what orders you gave the engineers on this voyage? A. No, sir; I don't 563
think I gave him any.

Q. Then your recollection is that the tanks were not emptied; is that right? A. I think some were empty and some were full, for the convenience of the ship in steadying her, because the fruit was on the top deck.

Q. Did you carry fresh water out in tanks from New York to supply the engines? A. Sometimes.

Q. Did you on this voyage, leaving New York the 26th of March? A. I can't say, because that is the 564
engineer's department.

Q. That would appear in his log book, wouldn't it? A. It should, I should think; I can't say.

Q. You say you have had 11 fruit voyages this year? A. Yes, I think it is 11; I can't say for sure.

Q. Have they been all to New York? A. No, sir; only two to New York.

Q. Others were to what points? A. Banes to Philadelphia.

Q. Do you remember what your draft was in the

565 deepest cargo that you brought to Philadelphia? A. The draft is in the log book; I can't say exactly, because we was some few inches lighter; but it is 13.10 or 14 feet, so close as I can recollect without looking.

Q. Is that in any book you have got here? A. A. Yes, sir.

Q. What was your draft on arrival at Philadelphia with the deepest loaded cargo that you brought there? A. I never take any notice on arriving, sir.

566 Q. What is the draft on leaving port for Philadelphia? A. They were all alike mostly. The log that I have here begins the 12th of July; the fruit season before that is in another log on the ship in Philadelphia.

Q. When did your fruit season begin this year? A. About the 15th of March. I think we started the 19th.

Q. And you made in that time about 10 voyages, did you? A. 11.

567 Q. From that time up to July 12th, when this log begins, how many voyages did you make, about. A. If there are 4 here then we have made 7.

Q. Do you remember how many bunches you took on your largest cargo from Banes to Philadelphia? A. No, sir.

Q. Can you state within a dozen bunches? A. No, sir, because I have got nothing to do with it. They have their own men to count in the fruit.

Q. You don't tally it? A. No, sir.

568 Q. In this log, Libellant's Exhibit A, you have the distance given in a column for each watch; is that from the taffrail log? A. Yes, sir.

Q. Have you on any of the entries the exact number of miles made from point to point of observed position? A. No.

Q. That is true of both voyages from Colon to New York? A. Yes, sir.

Q. How long before 1891, when you went on the charter to Messrs. Wessels, had you been in the fruit trade? A. I haven't been in the fruit trade before,

except I have been in Mr. Wessels' schooner in 1876, 569
I think.

Q. That was to what places? A. To Colon and down on San Blas coast.

Q. You didn't have anything to do with bananas at that time? A. No, sir.

Q. You are not an expert on bananas, or you were not in 1892? A. I am just as much an expert as a good many else.

Q. There are a good many men in it that are not very expert? A. I can refuse the fruit and I can take 570
it just as well as somebody else, when we are buying the cargo.

Q. When the fruit was brought off to the steamer on the first voyage, how far was the *Ceres* lying from the shore? A. From the shore about 200 feet, but from where they was bringing the cargo it was longer.

Q. How far was the *Ceres* lying from the place where the cargo was on shore? A. As near as I can remember, about four lengths of the ship. 571

Q. You remained on the steamer when the cargo was brought on? A. Yes, sir.

Q. You didn't see the cargo until it came alongside, did you? A. Yes, sir; I saw it on the point where it was laying when we was coming in.

Q. You saw it from the ship? A. Yes, sir.

Q. You didn't go ashore and inspect it? A. No, sir; but I saw it was uncovered, most of it.

Q. How much do you mean by "most of it"? A. It was stacked up in piles. 572

Q. That you could see from the ship? A. Yes, sir.

Q. And you didn't see any building or shed over it, did you? A. No, sir.

Q. That is what you mean by "uncovered"? A. Yes, sir.

Q. On this first voyage was any cargo rejected as being too ripe, or unfit? A. Yes, sir.

Q. About how much? A. I can't say exactly how much, because I was only counting the one hatch;

573 the supercargo was on some and the second mate on some

Q. And the captain had charge of rejecting cargo or not? A. I suppose he had; I don't know; I can't say whether he had or not.

Q. Who was buying the cargo? A. The captain, I believe; that is more than I can tell.

Q. Was there much difference in the quality of the cargo between those two voyages, when it was put aboard? A. I won't say there was much.

574 Q. But there was a great difference when it got here to New York, wasn't there? A. There was a great difference, because the cargo was stowed closer the last time than it was the first.

Q. It was very rotten when it got here the second time? A. Yes, sir, it was.

Q. Do you remember how much was rejected on the second voyage as being unfit? A. No, sir, I never kept any note of it.

Q. Did you pass the cargo down the hatch? A. No,
575 sir, I only tallied; watched the bunches.

Q. Who did pass the cargo down the hatches? A. Some niggers did that.

Q. Who attended to stowing it in the hold? A. The supercargo was watching that.

Q. Who were the men that stowed it in the hold? A. Niggers; laborers from shore.

Q. Do you remember whether, on this first voyage, coming back, you closed the hatches of the ship? A. No, sir.

576 Q. They were never closed between Colon and New York? A. No, sir.

Q. That is true of all three hatches? A. All four, sir.

Q. How near is the forward hatch to the bow? A. I can't say, because I never measured.

Q. It is pretty near the foremast, isn't it? A. It is just about forward before the foremast.

Q. Was there any time that you thought that it was dangerous to have that hatch open? A. No, sir.

Q. Were there any ventilators carried away for-

ward? A. No, sir; that hatch we cover over with a 577
sail.

Q. And the sail would keep all the water clear of the hatch? A. Yes, sir; we have got the big hatch built up about 24 inches high, and put the sail down and close it up just to let the air come through just the fore and after part of the hatch; three corner like.

Q. Whatever water was shipped on deck the sail would keep off, wouldn't it? A. Yes, sir; because forward there is a companionway for the men to go down in the forecastle. 578

Q. On this 18th and 19th of April, which is the homeward voyage from Colon, was there any damage done to the ship at all in this storm that you speak of? A. No, sir.

Q. You said that your mean draft loaded was 15.10 according to Lloyd's rules? A. Yes, sir.

Q. What do you get that from? A. I got it from the captain.

Q. That is Captain Svenssen? A. Yes, sir; because I never saw the scale, and I havn't been sailing in the 579
ship over on that side; but we have got a mark on the side.

Q. And Captain Svenssen told you it was 15.10? A. According to Lloyd's rules.

Q. That is all that you know then about it? A. Yes.

Re-Direct Examination by Mr. Kirlin:

Q. Has she ever been loaded that deep since you have been with her? A. I think we have been loaded 580
so deep.

Q. Do you know whether the deep draft is that; does that bring you to the mark? A. Yes, sir.

Q. 15.10 mean draught? A. Yes, sir.

Q. At whose request were you picking out and rejecting fruit at Colon on these two voyages? A. I got that order from Mr. Wessels when he was on board before; down on the Honduras coast.

Q. He asked you to pick out the cargo, did he? A. Yes.

581 Q. Which Mr. Wessels was that? A. Mr. Charlie Wessels.

Q. You said there were no sheds over this cargo that was waiting for you in the river at Colon; were there any tarpaulins over it? A. No, sir; not that I know of; there might be some branches of trees, a little; but that doesn't cover much.

Q. There were no sheds or tarpaulins over it when you came up in the river? A. No, sir.

Q. Will you, please, look through the log and tell
582 me what the draft was on leaving with the fruit on the four voyages of this year, which are comprised in this logbook? A. Leaving Banes July 19, forward 12.10, aft 15, cargo of fruit. Leaving Banes for Philadelphia Aug. 2, 12.10 forward, 15 aft. Leaving Baracoa for Philadelphia Aug. 17, 13 forward, 15.3 aft. Leaving Banes for Philadelphia Sept. 5, 12.6 forward, 15 aft.

Q. Did you take the draft personally on each of these occasions? A. Yes, sir.

582 Q. Did you also take the draft on the seven voyages of this year that are in the other log? A. Yes, sir.

Q. If that log is produced, will that show what the draft was on those other seven voyages when you left the loading port bound to the United States? A. Yes, sir.

Q. When were you first at this office about this case? A. Last Saturday.

Q. Did you ever see me or anybody from this office on the subject any other place before? A. No, sir;
584 not that I know of.

Q. Never were asked to make any statement, were you, before? A. No, sir.

Q. Did you say anything to the captain at any previous time about the condition of the fruit either at the port of loading or at any other time? A. The captain was on board the same as me; he looked at the fruit and saw it was bad.

Q. Did you talk to him about it at the time? A. Just what we were talking about on board the ship.

Q. That is what I mean; did you talk about its be-

ing bad at the time? A. Yes, sir; as near as I can 585
remember, because the captain is around with me.

Q. Are the figures at the stern and bow painted? A. Yes, sir.

Q. What color? A. White; cut in the iron.

Q. How far is this moulding that you stood on when you leaned out and looked at the figures below the top deck? A. About six feet.

Q. Opposite what deck? A. That is on the main deck of the ship.

Q. Opposite the main deck on the outside? A. Yes, 586
outside the main deck of the ship.

Q. And that, you say, is about six feet below the top deck? A. Yes, sir.

Q. You said something about being let down in a rope; what did you mean by that? A. I had to go down on the moulding with my foot and hang out on the rope, so I don't drop overboard.

Q. Do you lean out? A. Yes, sir.

Q. Hanging on a rope so you can look under the counter? A. Yes. 587

Q. That is what you mean by going down on a rope is it? A. Yes, sir.

Q. How far out can you lean that way standing on the moulding? A. I am no circus man, but I can go as far as it is convenient for me to see the draft.

Q. You can go far enough to see the draft, can you? A. Yes, sir.

Q. Have you any doubt about the drafts mentioned in the log being correct? A. No, sir, they are correct. 588

Q. I believe you said you didn't know whether you had water ballast in the tanks coming up on those voyages or not, did you? A. I know we had water ballast in some; we require it for the ship; but I can't say in what tank they were.

Q. Why do you require it? A. We require it for ward.

Q. Why? A. To steady the ship.

Q. Could you get along without it? A. No, sir.

589 Q. Did you have any more than you required to make the ship navigable for the voyage? A. No, sir.

Q. Why was the cargo placed up so high in the ship as to require water ballast below? A. Because to stow the fruit to give them plenty of air.

Q. Who took the record off the log at the end of each watch? A. On my watch I done it, and on the captain's watch the second mate and captain do it themselves.

Q. Is it put in the scrap log each time when it is
590 taken? A. Yes, sir, every watch.

Q. On the first of the voyages from Colon the expression "stiff breeze" occurs a good many times. What did you mean by that? A. That is what we call in sailing ships, when we commence to take in the light sails.

Q. How many miles of wind does that indicate? A. That is more than I can tell, for I never see them take the measure of wind.

Q. How do you distinguish between stiff breeze and
591 storm? A. Storms mean when we commence to reef the sails.

Q. What did you mean by saying the captain was buying the cargo? A. I suppose Mr. Wessels ordered him to do it; that is more than I can tell; but that is my opinion of it.

Q. He was buying the cargo for Mr. Wessels? A. Yes, sir.

By Mr. Putnam:

592 Q. Would you mind telling us your weight? A. 259 pounds.

Q. You are going to leave port to-morrow? A. That is more than I can tell.

By Mr. Kirlin:

Q. What is your height? A. About five feet eleven.

By Mr. Putnam:

Q. In coming from Banes to Philadelphia about how long were your voyages? A. About four days and a half.

Q. And you carry coal for about that length of 593
time? A. Round trip.

Q. For the round trip for eight days? A. We go across to Gibara and from there to Banes.

Q. When you get to Banes and come to Philadelphia you have coal left on board to bring you to Philadelphia? A. Yes, sir, from Banes.

Q. That is about four or five days? A. Yes.

Q. How does it happen that on every one of those voyages you had exactly fifteen feet draft aft—neither an inch more or less—from Banes? A. That is what 594
she has been drawing.

Q. How did you ascertain the draft in Banes? A. Standing on the wharf.

Q. She lay alongside the wharf? A. Yes, sir.

Q. Did she ever bring a full cargo from Banes? A. I don't know what you call it by full cargo; it depends on how they are stowing it; some people want it close and some don't.

Q. Did she ever come with a full fruit cargo from Banes stowed in either way? A. Yes, sir. 595

Q. Do you know how many bunches? A. No, sir.

Q. Was the square of the hatches ever filled on these voyages? A. Yes, sir, sometimes.

Q. Which voyage? A. That is more than I can tell, but sometimes they are full; it depends on how much fruit they have to send.

Q. I mean any one of these voyages that you have given now since the 12th of July? A. I can't say exactly, because I never put that cargo down in the books. 596

Q. You don't know how many bunches she carried at any time? A. No, sir.

By Mr. Kirlin:

Q. Did you have full cargoes or not? A. We had a full cargo some trips; but I cannot say which.

Q. Does the fruit come any better if it is stowed more loosely than it does if you carry a larger number of bunches? A. Certainly; the more loose it is stowed the better air it will get, the better the fruit will keep.

597

JOHN HAUG, being duly sworn and examined as a witness for the respondent, testifies:

By Mr. Kirlin:

Q. What is your business? A. I am a marine engineer and architect.

Q What position do you hold at present? A. I am surveyor for Lloyd's Register at Philadelphia.

Q. Then you have the same relative position that
598 Mr. Congdon has here? A. Yes, sir.

Q. Do you do engineer surveying in New York also for Lloyds? A. I do; yes, sir.

Q. How long have you been a marine engineer? A. About thirty years.

Q. How have you been engaged during that time? A. In working in the shop and going to sea, and in drawing and designing vessels and engines, and surveying work.

Q. In what places? A. In Germany, England, and
599 lastly in this country.

Q. How long have you been Lloyd's Surveyor? A. Twelve years now.

Q. What lines do you survey for in Philadelphia? A. I survey all vessels that come there.

Q. Engine surveys? A. Engine surveys and hull surveys.

Q. When did you first see the engines of the *Ceres*? A. I think May 18, 1892.

Q. What was the occasion of your examining the
600 engines at that time? A. Well, I was called upon to hold a survey.

Q. By whom? A. By Mr. Congdon; and especially with a view of examining the furnaces and boilers.

Q. How did Mr. Congdon come to request you to hold this survey? A. He is the surveyor for this district, and if there is any surveying to be done he calls me for boiler survey.

Q. Mr. Congdon asked you? A. Yes, sir.

Q. When you went on board the *Ceres* on the 18th of May, what was the condition of the boilers and fur-

naces? A. The port boiler was in a very good condi- 601
tion; and on the starboard boiler, the engineer informed me that the furnaces were slighly flattened on the side; I examined them very carefully; I couldn't see anything, but the engineer had made some templates to fit the circle of the boilers, and he used those templates, and I found that they were down about three-sixteenths to a quarter of an inch on each side.

Q. Did you find anything the matter with the tubes? A. There were a few of the tubes I thought had been leaking slightly. 602

Q. Did you make any recommendations? A. I recommended that they should be expanded in the usual manner by an expander, and sometimes if they have been expanded very often a ring is put in to re-enforce them.

Q. Could you tell about the condition in which the tubes of the *Ceres* were? A. Some were leaking.

Q. How many tubes were leaking? A. A dozen or a few more.

Q. How many are there on that boiler? A. 240 in 603
each boiler.

Q. Would that leaking, as much as you say, materially affect the keeping of steam, or affect the speed of the vessel? A. I don't think it would.

Q. Was there anything to indicate whether those leaks were of long duration or not? A. No.

Q. Did you make any recommendation about the flattening of the furnaces? A. No; I merely told the engineer that he should keep his template and occasionally inspect it and see whether it would come down any 604
more.

Q. As it was, would that affect the speed any? A. Oh, no; none whatever.

Q. Did you pass the boilers as entitled to be classed in any particular way? A. I did; after those little matters had been attended to.

Q. When did you see her again? A. I think I saw her again about four weeks later.

Q. What condition were the boilers in then? A. They appeared to be in good condition.

605 Q. Were the furnaces in the same condition? A. Just the same, yes.

Q. Did that slight depression in the furnaces at all affect her seaworthiness? A. I don't think so; no.

Q. She continued in that same condition of the furnaces for an indefinite time without injury? A. Yes, sir; up to this time.

Q. After you saw the boilers and engines in June, did you pass her for a survey? A. Yes, sir: I gave her a certificate for seaworthiness.

606 Q. How was she classed as to boiler and machinery? A. Well, I merely give a certificate for boilers, and of course, direct that the record of the boiler survey should be made, as usual.

Q. How did that leave her class? A. In the same condition.

Q. First class? A. Yes.

Q. 100 A1? A. Yes, sir.

Q. When did you next see the boilers and furnaces? A. When I surveyed her again in Philadelphia in June,

607 1893.

Q. What condition was she in then? A. In a good condition.

Q. In the same condition? A. In the same condition, yes, sir.

Q. As to depression? A. Yes, sir.

Q. Had that increased any in the meantime? A. No.

Q. What did you ascribe that to? A. There might have been a small accumulation of grease on the fur-

608 naces.

Q. How could grease get on the furnaces? A. Through the cylinders, cylinder oil with the feed water; sometimes there is an accumulation if there is too much oil put in the cylinders and it will go through the condensers and on the boiler again.

Q. Were the tubes all right in 1893? A. All right, yes.

Q. When you saw the boilers and furnaces in 1893 was there anything at all on them about which you

could say that she was unseaworthy? A. Nothing 609
whatever.

Q. Was that true also of 1892? A. Yes, yes.

Q. Do you think that slight depression in the top of the furnace was fairly entitled to be called in a condition of collapse? A. No; I wouldn't call it that; that would be misleading.

Q. What would a condition of collapse be? A. Well, if it was down two or three inches I think I would call that a collapse.

Q. That degree of depression would substantially 610
weaken the furnaces, wouldn't it? A. Yes; of course.

Cross-Examined by Mr. Putnam:

Q. Have you a memorandum of when it was that you passed the vessel as entitled to have her class renewed? A. Well, I have a journal in which I enter my surveys.

Q. You said on the 18th of May you made the first examination and you found the port boiler in good condition and the starboard boiler with the furnaces slightly 611
flattened; and four weeks later you found her in a condition that you could class her; have you got that exact date? A. Yes, I think I have it; on the 14th of June I have this entry: "Examined boilers; all right and the boiler survey completed."

Q. And at that time you gave her first class? A. Yes.

Q. Did you require the patches to be recaulked on the boilers before reclassing her? A. Yes.

Q. And on which boilers, port or starboard, or both? 612
A. I think only on the starboard boiler, as far as I remember.

Q. The port boiler had no patches? A. It may have had small ones; but they were not in such a condition that I paid any attention to them.

Q. How long had these boilers been in the ship, do you know? A. I don't remember; no.

Q. Something over 11 years, wasn't it? A. Perhaps so; I don't know.

Q. When you visited the ship the first time, on the

613 18th of May, did you yourself go inside the boilers to see whether they had scaled or not? A. Yes, sir.

Q. How did you find the crown sheets to be then? A. There wasn't much to be seen.

Q. Not much scaling? A. Not much scaling.

Q. In the ordinary cause of this flattening or depression, might that be due to scalding? A. It might be or—it is hard to say.

Q. It is one of the causes for flattening? A. Yes, sir.

614 Q. And if the vessel is thoroughly cleaned in every two or three months would that have a tendency to keep them from collapsing or flattening? A. Well, to an extent, but it will take a considerable thickness of scale to cause a collapse; but if the collapse is caused by grease it will take a very small thickness; that is the difference.

Q. Did you recommend anything to be done to the back connections of the boiler? A. I don't think I did.

Q. Isn't it a fact that you made a written report of
615 the furnaces at that time, according to your custom? A. Well, that is a report that is confidential between myself and Lloyd's Register.

Q. What I mean is, you as a surveyor go to a great many vessels during a month, perhaps in the same day even, and you preserve a written memorandum of what you see wrong, and direct to be done? A. That is of the most primitive order; I just make a few marks in my diary that nobody else but myself could find out.

Q. Don't you enter that in a regular book, so that a
616 month hence you can see whether your recommendations have been carried out? A. Yes, sir.

Q. Have you any objection to letting us have that report? A. I haven't got it with me.

Q. I mean sending it over from Philadelphia, or sending us a copy that you yourself will certify to be correct? A. I can send you a copy.

Q. I would like to have a copy of the record of your survey made on the 18th of May, and any further record you may have after that of that vessel? A. Yes, sir.

By the Court : 617

Q. Don't you give a written statement of the details of what you recommend done? A. I do if it is requested, but not otherwise; most of my recommendations are made verbally or to the engineer; but if the owners desire a written statement I give it to them. If the reports are very extensive and complicated, of course it is done sometimes; but if only a few points are to be considered, or the damage is not material, it is done verbally.

618

By Mr. Putnam :

Q. When you made the examination of the vessel on the 14th of June and certified it was all completed was the vessel in the same place as she had been when you visited her first? A. I don't know.

Q. It was here in New York? A. Here in New York; yes.

By the Court :

Q. Were all your recommendations complied with? 619
A. Yes.

Q. Do you know whether you had your memorandum present to see whether they were all covered? A. No; but there was only about four weeks between. I could recollect that well enough.

By Mr. Putnam :

Q. Why was it necessary to recommend that these patches should be recaulked? A. They were just slightly leaking.

Q. What is the effect of a leaking patch on the fires 620
in the furnaces? A. Of course if there is an extensive leakage it would damage the fires and interfere with them.

Q. Can you recollect at this time how many patches there were on the starboard boiler that were more or less leaking at the examination on the 18th of May? A. I don't know exactly whether there were two or three; but I think about that number.

Q. When patches are leaking can the full working

621 steam pressure be safely put on the boilers? A. Well, it all depends upon the degree of leakage.

By the Court:

Q. Has this steamer only two boilers? A. Two boilers.

By Mr. Putnam:

Q. At the time you examined her, the 18th of May, was the steam up? A. No; there was no steam up.

622 Q. I am asking you now on the 18th of May, when you first examined her, you went into the boilers then? A. Yes, sir.

Q. There was no steam up? A. No.

Q. You couldn't tell exactly how much they were leaking? A. I could tell by their appearance.

Q. What was their appearance? A. The appearance showed that they were leaking slightly; if they had leaked more I would have ordered new patches.

Q. Does that apply both to the patches and the

623 tubes? A. Yes.

Q. What pressure did you think could be safely put on the boilers on the 18th of May before you made any recommendations to repair? A. It wouldn't interfere very much with the pressure; she could carry her full pressure; the leak was slight.

Q. Didn't that have a tendency to put out the fires? A. It was too little for that.

Q. Do you remember what you gave your certificate for after the repairs were made? A. I think it was 80

624 pounds.

Q. That of course will appear if you send us a copy? A. Well, I don't know.

Re-Direct by Mr. Kirlin:

Q. Do you know whether your report made any reference to the depression in the furnaces or not? A. Yes, it did.

Q. Had the vessel made an intermediate voyage between the two surveys? A. Yes, sir.

Q. Is it an unusual thing to find patches on boilers?

A. No; it is quite usual after boilers get a certain age 625
they will be patched.

Q. It doesn't make a ship unseaworthy? A. No, sir.

Q. Or unfit unless it leaks too much to keep the fires going? A. No, sir.

Q. When you got in the boiler did you see enough scale on the crown sheet to account for the depression; or did you ascribe it to something else? A. No; I didn't see much scaling. I thought it was done by grease.

Q. Considering the age of those boilers, and assum- 626
ing that they were 9 years old, was their condition such as to indicate anything about their maintenance during the period of their life? A. They looked about as good as could be expected, I thought.

Q. Was there anything about them then that suggested the need of new boilers? A. No.

Q. Did they show any neglect? A. No.

Q. How long do boilers last, with good care, generally? A. I have seen boilers that lasted 12 years, and some that lasted as much as 20 years. 627

Re-Cross-Examination by Mr. Putnam:

Q. You don't want us to understand that letting the top collapse down, or flatten, is good engineering for the engineer, is it? A. Well, that is hard to say.

Q. It is either due to some defect in the boiler or some bad management? A. It happens often, and sometimes it is a good deal worse than in this case.

Q. Isn't it generally due to bad management or some defect in the boiler? A. It couldn't be due to 628
a defect in the boiler.

Q. It must be due to letting something in from the surface and preventing the heat from going through properly? A. Yes.

Q. Whether that is the scale or deposit from the water, or whether it is grease that comes in, of course you can't tell? A. Well; I didn't see any scale, so I concluded it was grease.

Q. Could you form a judgment of how long that de-

629 pression had been there? A. It must have been there ——it couldn't have been there very long.

Q. You couldn't say whether it was one year or six months? A. I think the engineer would have discovered it before that.

Q. As far as the appearance of the depression itself was concerned, you couldn't form any judgment as to the length of time? A. No.

Q. How recently had you surveyed the boiler before that? A. I didn't survey the boilers before May,
630 1892.

Q. Never seen it before? A. Never saw them before.

Q. Did the engineer express any opinion to you as to how long it had been there? A. He said he noticed it only on the last voyage coming this way.

Q. And he called your attention to it by measurements? A. He had templates that he put on the plate.

Q. When the surface of the furnaces is flattened and
631 the boiler has patches and the patches are leaking, you wouldn't consider that that was a thoroughly efficient state for the boilers to be in? A. I considered them efficient enough to pass them for another year.

Q. That was after she had been repaired under your direction? A. Yes, sir.

By Mr. Kirlin:

Q. Don't you sometimes have those depressions in the highest class of steamers with the best engineers?
632 A. Yes.

Q. You can't always tell when it is coming? A. It sometimes happens very suddenly.

Q. All you can do is to remedy it if it needs to be remedied? A. Yes, sir.

633

JOHN A. HARDON, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. Kirlin:

Q. What is your occupation? A. I go to sea.

Q. Have you been to sea on the *Veres* within the last year? A. Yes, sir.

Q. How many times? A. One trip.

Q. When? A. May.

Q. Where from and where to? A. From Philadelphia to Banas and back to Philadelphia. 634

Q. For whom did you make that trip? A. Mr. Dumois.

Q. What cargo did you carry? A. Bananas.

Q. What cargo did you carry out? A. None.

Q. Did you come from Banas to New York? A. No; Philadelphia.

Q. With the same cargo? A. Yes, sir.

Q. Do you remember what speed the vessel made from Banas to Philadelphia? A. About 11 knot. 635

Q. Did you have any rainy weather? A. It rained all the first night.

Q. Were the hatches on? A. No, sir.

Q. How was the fruit protected? A. All right.

Q. By what means? A. By the awnings taken down to the deck.

How many awnings did the ship have? A. She had 4.

Q. How much of the top deck did that cover? A. All the deck but the engine and the bridge. 636

Q. Covering all the hatches? A. Yes, sir.

Q. Did the awnings extend the full length and breadth of the ship? A. The full length of the ship when they were set; not over the engine room.

Q. Did you notice that any of the awnings were too short for the hatches? A. No, sir; they weren't when I was aboard.

Q. When you were aboard all the awnings were long enough? A. Yes, sir.

Q. Did the aft awning come clear back to the stern? A. Yes, sir.

637 Q. What was the quality and condition of the awnings? A. No. 3 cotton duck.

Q. Is that the usual weight for awnings? A. It is heavy.

Q. Did the fruit get wet at all during that rain? A. No, sir.

Q. The awnings shed all the rain? A. All kinds will leak a little.

Q. Did it do any damage? A. No, sir.

Q. What condition was your fruit in? A. In first-
638 rate condition.

Q. Was it damaged by the water at all? A. No, sir.

Q. How many years have you been in the banana trade altogether, as captain and supercargo? A. Since 1850.

Q. On a good many different vessels? A. Yes, sir; schooners for 20 years.

Q. Did they all have awnings? A. Not much.

Q. How did you keep the fruit dry? A. We had to
639 carry it on deck for years.

Q. Have you been in any other steamer besides the *Ceres*? A. Yes, sir.

Q. How many? A. About 9, I think.

Q. Did they all have awnings? A. Yes, sir.

Q. How did the awnings of the *Ceres* compare with the others? A. The awnings made on the other side ain't no good; in Europe they don't know how to make awnings; they are just hemp, and very different and very light.

640 Q. How did these awnings compare with the other awnings? A. Better; heavier.

Q. Better than the others? A. Yes, sir.

Cross-Examined by Mr. Putnam:

Q. On this trip in the *Ceres* from Cuba to Philadelphia; when did you arrive in Philadelphia? A. I couldn't say.

Q. Was it June or July? A. No; May.

Q. Do you know how many bunches you had on

board? A. I think we had 14,500; about 15,000, I 641
forget which.

Q. You mean this year, 1893? A. Yes, sir.

Q. Did you say that the awnings went clear aft to the taffrail? A. Yes, sir.

Q. Then they went the full breadth of the ship? A. Yes, from the bridge forward.

Q. And that is the way they were put in in wet weather? A. Yes, sir.

Q. When it was rainy weather in the daytime they were put up? Yes, sir. 642

Q. How many days was it raining? A. Only one night.

Q. The awnings weren't up that night? A. Yes, sir.

Q. How long did it rain? A. Nearly all night.

Q. You didn't carry any fruit in the square of the hatch? A. No, sir.

Q. So if any water went down the hatch it didn't strike the fruit? A. No, sir.

Q. Did you have any fruit in the lower hold aft? A. 643
Yes.

Q. You don't know how much? A. No, sir; I don't remember.

By Mr. Kirlin:

Q. How many of the awnings were there altogether? A. 4 awnings for the fruit and then one aft over the cabin; that was set all the time.

Q. The fruit awnings overlapped when they were stretched, did they? A. They laced up to each other 644
with a lacing.

By Mr. Putnam:

Q. Did you notice them particularly to see if they were No. 3 duck? A. I know they were No. 3 duck because there was some patches on them.

By Mr. Kirlin:

Q. Did any spray come aboard on that voyage? A. No, sir.

645 Q. What kind of weather was it from Banas? A. It was warm.

Q. How was the sea? A. We didn't have much sea all the way home; we had a good passage home.

Q. Did it rain very heavily that night? A. Yes, sir.

Q. All night? A. Yes, sir; very heavy; squally.

Q. Did it last long? A. Yes, sir; the fore part of the night.

Q. Were the awnings old or new? A. The awnings was new.

646 It is admitted that after the rejection of the vessel on the 21st of May the re-charter was at a fair market rate.

Mr. Convers: Mr. Haug produces, as desired by the libellant, a copy of the entry in his journal of the items of repair recommended by him on the survey.

647 John H. Pollard, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. Putnam:

Q. You are the foreman for Andrew Phillip, and you have been for many years? A. Yes, sir.

Q. How long in his employ? A. Five years foreman.

Q. What has been the character of your work in that time? A. Generally steamship repairer.

648 Q. Repairing boilers and engines? A. Repairing boilers and engines and hulls.

Q. Have you been a marine engineer? A. Yes, sir.

Q. Did you do work on the *Ceres* at different times? A. Yes, sir.

Q. Do you remember going to the *Ceres* to patch or to caulk the patches of her boilers in the spring of 1892? A. Yes, I remember caulking the patch in the center furnace of the starboard boiler.

Q. Do you remember what month that was in? A. I believe somewhere near the end of April.

Q. What time in the day did you go there? A. Between four and five o'clock. 649

Q. In the afternoon? A. Yes; I remember it because I come from Philadelphia that afternoon.

Q. And when you went there were there fires, or was the water in the boiler cold? A. The water in the boiler was cold; there was no fires going excepting the donkey boiler.

Q. In that boiler, the starboard boiler, was it tight or leaking? A. Leaking a little, yes.

Q. Without any steam pressure? A. Yes, sir. 650

Q. What did you do when you got there? A. The engineer asked me to try and caulk it up, stop the leak if possible.

Q. And what did you do to stop the leak? A. I got tools and started to caulk it lightly.

Q. Did you notice at the time anything in regard to the top of the furnaces of that same starboard boiler? A. Yes, sir.

Q. What did you find about that? A. While caulking I happened to look up and noticed the crown-sheet 651 was down a little.

Q. Did you call the attention of anybody to it? A. I considered whether I would do it or not, and latterly the engineer came down and I drew his attention to it.

Q. That is the engineer of the *Ceres*? A. Yes, sir.

Q. And what did you say to him? A. I said "Chief, don't you think this sheet is down a little bit?" He looked in the furnace and said, "Well, I don't think so." I said, "look again," so he looked again and latterly he said, "Yes, it does look as if it 652 was down"; I said, "Chief, the best way to prove it if you have got the gauges the furnace has originally is to get the gauges and try it." So he went up-stairs or somewhere in the engine-room anyhow and brought the gauges down along with his two assistants and they handed the gauges in to me, the one belonging to that furnace; I put it up where the crown-sheet looked to be down and put my fingers on each side of it.

Q. The gauge was made to show the exact curve of the top of the furnace? A. As it originally was.

653 Q. And when you put your fingers in how much did that indicate it was out of line? A. Probably somewhere between three-eighths and half an inch.

Q. Did the chief engineer see that also? A. Yes, he was there with his assistants.

Q. What did he say after that was shown him? A. He examined the other furnaces and found out all were more or less the same and asked me what I thought would be best to do for it; I said if I was in his position I would immediately pump the fresh water out of
654 the boiler, or drain it out, and have the crown-sheet scaled anyhow.

Q. Do you know whether that was done? A. Yes, I know it was; at least I know men were got to do it.

Q. You didn't do that yourself? A. No, sir.

Q. You were not inside of the boilers? A. No, sir

Q. So you couldn't state what caused this depression? A. Merely imagine; there was something to cause it. I could probably say what caused it.

Q. You didn't see it yourself? A. No sir.

655 Q. Did you form any judgment from what you saw as to how long they had been in that condition? A. No, I couldn't say how long.

Q. How much of a patch was this that you caulked on the boiler at that time? A. Probably 2 feet 6, something like that, by a foot.

Q. And how long did you work caulking the patch? A. Somewhere about five o'clock that evening probably to nine o'clock.

Q. What was the character of the repair you made
656 and the caulking you made as to being permanent or temporary? A. It is very hard to tell whether it is going to be permanent or temporary in a case of that description, the expansion and contraction is such.

By the Court:

Q. Where did you caulk it, in what part of the boiler? A. The furnace.

Q. The whole of it? A. No, sir, the patch was in the furnace.

By Mr. Putnam: 657

Q. Can you tell what part of the furnace whether the side, top or end? A. The starboard side of the furnace in the centre.

THE COURT: Who employed you to go aboard? It is admitted that it was done at the request of the owners through the captain.

Q. Did you on the next trip do any work in May on the *Ceres*? A. I couldn't say whether it was the next trip but I went on the dry dock later on and looked 658 after a plate in the side of her and a new wheel.

Q. Do you remember whether you put a new wheel consisting of a hub or only the blades new? A. All the new wheel as near as I can remember.

By the Court:

Q. Do you mean the whole propeller? A. Yes, sir.

By Mr. Putnam:

Q. Did you do any work on the boilers the next time in May? A. I didn't personally, but there was 659 work done on them.

Q. Did you see work done on them? A. There was men working on them—Mr. Phillip.

Q. You know Mr. Haug the inspector of Lloyds? A. I have seen the gentleman before.

Q. Did you see him down there at that time? A. I saw him in the boilers once, I don't know what time.

Q. Had work been done in the boilers before he came there? A. Oh yes; scaling.

Q. Do you know how many days? A. No, sir. 660

Q. Do you know they had been scaled before he came there? A. They were scaled that time it was found the sheets were down more or less on the crown-sheet; in May they were scaling.

Q. I refer to the time in May when you saw Mr. Haug there whether any work had been done on the boilers in scaling? A. Yes, as near as I can know.

Q. You know what is meant by engineers and machinists by "overhauling" a steamer, do you not; will you just state what it is? A. What I would look on

661 as an overhaul is to pull the machine generally apart and have a look at almost all the work and parts connected with it.

Q. That is, to examine those parts you don't see when the machinery is in ordinary work? A. Yes, and parts you do see too.

Q. Is it necessary to keep machinery in good condition to have an overhauling from time to time? A. Almost any ocean steamer has got to be overhauled time and again even if they are kept up pretty well.

662 Q. How often is it necessary to do it with an ocean steamer in regular trades? A. The class of trades generally makes a difference.

A. And the length of time they are in port? A. Yes, sir.

Q. Suppose a steamer is in the fruit trade on which she runs rapidly, how often should she be overhauled? A. Some machines want more overhauling than others; it is pretty hard to say.

663 By the Court:

Q. Give an idea; should it be as often as once a month? A. Not necessarily that.

Q. Should it be once a year? A. More than that even if it was kept up pretty well, I should imagine.

By Mr. Putnam:

Q. Did you ever make an overhauling of the *Ceres* at any time? A. Never; anything I know of I could call a general overhauling.

Q. Simply did particular work you were ordered to
664 do? A. Exactly.

Q. The Judge asked you, if it should be overhauled once a year and you said more than that; you mean more frequently than once a year? A. Yes, even if it was kept up between; that is, men doing work more or less on spare times.

Q. You didn't yourself make any accurate examination of the boiler and furnaces the second time in May, did you? A. No, sir.

Q. Your attention was to the propeller and the other work? A. Yes, sir.

CROSS-EXAMINED by Counsel for the *Ceres*: 665

By Mr. Convers:

Q. When you are sent to do a piece of work about a vessel that was in the condition of the *Ceres* did your employer give you instructions as to what you should do? A. Yes, sir.

Q. And you didn't depart from the instructions you received from him, did you? A. No, sir.

Q. He gave you the particulars that you were to give attention to? A. Yes, sir.

Q. You say that you caulked the starboard boiler? 666
A. Yes, sir.

Q. On the first occasion when you had anything to do about the *Ceres*. A. I had worked on the *Ceres* long before that.

Q. You had? A. Yes, sir.

Q. Did you find the *Ceres*, so far as you saw—and you were working around her for some time—did you find her generally in good order, except in the respect that you have stated? A. I paid no very particular attention any more than what I was called to. 667

Q. And you didn't see any other repairs that were necessary or needed at the time, did you? A. I paid no attention but what I was brought there for except when I was at that patch noticing this——

Q. Has it been your custom to limit yourself to the specific pieces of work you were told to do on all these former occasions when you worked under your employer? A. When I see anything wrong I mention it as a rule, but don't pay any particular attention to that any more that when I come across it. 668

Q. You never mentioned anything as being out of order about the *Ceres* at any time to your employer, did you? A. No, sir, any more than I told him next morning about noticing the crown-sheet.

Q. That is the only thing you ever called his attention to? A. Particularly, yes, sir.

Q. And the things you did were done because he directed your special attention to them? A. He sent me to the ship and the engineer generally directed my attention.

669 Q. Does your employer overhaul vessels? A. Yes, sir.

Q. And does he pursue the same course of business in overhauling vessels as between him and you that he did in this case? A. Yes sir.

Q. In other words, he looks out as to what should be done and sends you to do it? A. He generally sends me aboard the ship and the engineer gives me instructions what to do generally, but not always; sometimes he instructs me what to do; sometimes one
670 way or the other; all mixed up as far as that is concerned.

Q. When the ship is overhauled does the employer superintend the work generally, to see if it is done right and everything in order? A. Sometimes he comes around and has a look at it, but not always.

Q. When everything is opened up, if anything is found wrong, or out of order is his attention called to it? A. Oh, yes, if it is anything much out of order.

Q. And nothing important is done in the shape of
671 repairs without referring the matter to him first, is there? A. Sometimes it is referred to the chief engineer and he takes it in his own hands.

Q. But that was not so in the case of the *Ceres*? A. It was referred to the chief engineer and I told Mr. Phillip about it later on, probably next morning, I think it was.

Q. When you took this gauge to see if the boiler had fallen in any and applied it to the boiler, what part of the gauge pressed the boiler? A. The crown of it.

672 Q. And nowhere else? A. No, sir, not in that furnace. They tried it themselves in other furnaces and it was generally on the crown, right along the top of the furnace.

Q. How much space, then, was left at either extremity of the gauge? A. I put my fingers in probably that far in each side of the patch, where it was hanging down.

Q. You didn't put your fingers between the gauge and that part of the boiler which had been depressed, but you put it at the side? A. Yes, sir. The gauge

was up against the part that was depressed, and it was 673
open on each side.

Q. How do you know the gauge fitted the boiler closely but for this depression? A. But for this depression it would have fitted it, if it hadn't been for the depression, because it fitted the furnace in other parts.

Q. Before and behind the place where the depression was? A. Yes; not behind, because in that furnace it was close up to the top sheet.

Q. You tried it to see? A. I tried it because the 674
engineer asked me to do so and he was outside looking on.

Q. You don't pretend to say that you knew how many times the surveyor, Mr. Haug, was there, do you? A. No, sir, I would not pretend to do it.

Q. Did you have any conversation with him? A. No, sir.

By Mr. Kirlin:

Q. Have you had any experience examining boilers 675
which are supplied by salt water with steam? A. Yes, I have been in them more or less.

Q. Is there any difference in the effect, in the use of different water? A. Yes, sir.

Q. What is it? A. Salt water will form a heavy scale on it, and will form kind of a dirty surface; a kind of hard scale will form over the crown-sheet.

Q. Salt water forms a heavier scale than fresh water? A. Oh, yes; some class of fresh water will form heavy scale where there is minerals. 676

Q. Do you think a voyage of two or three weeks or three or four weeks would make much difference, have much effect to accumulate a considerable quantity of scale? A. It depends how the engineer handles his boilers as far as that is concerned; if he blew them down and kept them right by the salinometer it would be all right.

Q. If they were managed properly in the usual way much scale wouldn't accumulate in the four weeks, I suppose? A. No, sir; it shouldn't.

677 Q. Suppose some scale was reported to be present on the start of a four weeks' voyage, would a scale increase very appreciably during the four weeks if the engines were managed properly? A. That depends where it was running to and what class of water they were using.

Q. Supposing they were used properly, as a good engineer would use them, there wouldn't be much increase of scale in a voyage of four weeks, would there? A. Oh, yes; quite considerable.

678 Q. How much? A. Oh, well, that depends; a hard question that.

Q. Would that scale have anything to do with leaking at the tubes? A. Yes, if it formed around the neck of the tubes it would.

Q. The scale was in the boiler I understood, not around the necks of the tubes? A. It must be scaled on the top of the furnace to drop it down.

Q. I ask, would the scale on top of the furnace have anything to do with leakage of the tubes? A.

679 No.

Q. Would scale on the inside of the boilers have anything to do with making patches leak? A. Yes, it might.

Q. How? A. Form over it, and the water not act on the sheet properly; the furnace would get at it and therefore bring a quick expansion on it and heat the plate beyond what the water was.

Q. How would that make it leak? A. It would stretch the patch at one point and not the other, and

680 therefore make it leak; the pressure behind it would make it leak.

Q. How much scale did you find on the boiler? A. I didn't examine her.

Q. You didn't find any? A. I didn't examine her.

Q. Did you ever look over the entire engines and boilers of the *Ceres?* A. Never made a special affair of it, no.

Q. Did you know of any repairs she needed at any

time when you went on to her that were not made? 681
A. I paid no attention, only what I was told.

Q. Was the work you did in thoroughly good condition when you left the work? A. To my best knowledge, what I did.

Re-Direct by Counsel for Libellant:

By Mr. Putnam:

Q. In case a vessel is running down in tropical waters using salt water from the ocean, how often ought the boilers to be scaled, or examined for scale, to keep 682
them in good efficient condition? A. Oh, if the ship was in use continually, I would say every two or three weeks it ought to be examined anyhow.

Q. Have you been an engineer yourself in those waters? A. Yes, sir.

Q. How does the density of salt in tropical waters compare with northern waters? A. In some parts there is more salt than others.

Q. If there is a scale deposit in a boiler, there will 683
also be scale on the tubes as well as on top of the boiler? A. Yes.

Q. And the same tendency to burn if the scale gets so thick as to prevent the heat from going through quickly? A. Yes.

Q. That would cause the tubes to leak, wouldn't it? A. Yes, cause anything to leak if it is burned enough.

Re-Cross by Counsel for the *Ceres:*

By Mr. Kirlin: 684

Q. Whether the tubes should be examined every two or three weeks would depend on other conditions besides mere use of salt water? A. Yes.

Q. You wouldn't think of examining the boiler every two or three weeks, would you, in an ordinary —— A. The question he asked was in using tropical water; it depends which way it is used.

Q. Where have you been trading when you were engineer? A. Between New York and the West Indies, South and Central America.

685 Q. On what vessels? A. On the *Alvo*, of the Atlas Line.

Q. Have you always examined boilers every two or three weeks for scales? A. Examined them down in South America—that was three weeks' run, less than that—because we called all over the West Indies and Central America, and when we came to Carthagena we had the boilers thoroughly cleaned, and the same in New York; that was forty-two days the round trip.

Q. That would mean you found the scale? A.
686 Yes.

Q. That is, if you found scale; if you didn't find any you wouldn't scale? A. There is always men to touch them up whenever it is necessary.

JOHN HAUG, recalled for the libellant, testifies:

The witness produces a copy from his Journal called for on his cross-examination on Wednes-
687 day.

It is marked Exhibit 83.

By Mr. Putnam:

Q. This is a correct copy of the portion of your Journal that I called for? A. Yes, sir.

Q. In the first entry of May 18 you have in the last right hand part of the paper three lines of writing with a small diagram? A. Two sketches; yes, sir.

Q. Will you please state the writing of the third or
688 bottom line? A. (Reading) "Recommended going on, and if increasing, rings on."

Q. By that you mean first recommended that the steamer should go on? A. Yes, sir.

Q. That is, go on her voyage? A. Go on her voyage.

Q. What is meant "and if increasing"? A. If the indentation in the furnace should increase I would recommend that these rings should be put on which I have sketched there.

Q. That sketch of rings indicates rings that you

would put about the furnace, inside the boiler, to hold it against pressure? A. Against further indentation. 689

Q. How many rings were indicated should be put on? A. I don't recall exactly what I suppose in a furnace of that length there would have to be two or three rings.

Q. What size rings were they to be? A. Just made differently. Some people make them of angle iron, say 3 by 4 angle iron, and others of half round iron, 3½ inch round iron, and others of bar iron. That is a matter that I didn't consider of importance to specify, as I thought the people, the engineer or people doing the repairs, would attend to that matter. 690

Q. At that time, on the 18th of May, did you give her any permanent certificate or class, or how did you allow her to proceed with the voyage? A. No. I had not completed the survey; I had to adjust the safety valve to the working pressure, and as that could not be done at that time I advised she should proceed on her voyage and be again examined on her return. 691

Q. What kind of certificate did you give her, for I understood it was stated her class had expired? A. But we always allow them to go on a voyage if the same is not too long.

Q. So you gave her permission to make that voyage out and back? A. Yes.

Q. Of course, putting these rings around the furnace would have to have holes drilled and something to hold the shell or plate of the furnace up against the ring? A. Yes. 692

Q. What kind of bolts would have to be put through? A. Rivets.

Q. Have you indicated that in the sketch? A. Yes, I have.

Q. And at the time you examined it on the 18th of May you were uncertain whether this would increase and require that, or whether it would remain in the same state it was then? A. Yes, sir.

Q. How much of an increase, in your judgment, would be necessary to require the boiler and furnace to

693 be supported with these angle iron rings? A. If it had shown any increase at all, say if it had shown a quarter of an inch, I think I would have required those rings.

Q. If it had shown a quarter of an inch more than it did at that time? A. Exactly.

Q. So it had got within a quarter of an inch of requiring those supports? A. I don't know exactly about that; I think if it would have shown an increase at all.

694 Q. Have you any rule, as a boiler inspector, for how much of a flattening may happen without requiring supports or that must require supports? A. No; it is left to our judgment.

Q. Purely a matter of judgment? A. Exactly.

Q. Is it usual to reinforce a boiler that way with inside rings? A. Sometimes it is; it all depends on the construction.

Q. Can you remember an instance in which you have done that before? A. Oh, yes, I do.

695 Q. Recently? A. I think so; yes, sir.

Q. How recently? What I want to get at is how frequently a boiler is reinforced in that way? A. I think I have only had one case within my knowledge that I had to do it.

Q. In how many years? A. In, say, twenty years.

Q. I think you stated in your examination that there was a leaky patch, or leaking at that time on the 18th of May when you examined it? A. Yes, sir.

Q. I don't see any statement of that in this Journal?

696 A. I only enter the main points in my Journal; it would be too numerous if I entered every detail.

Q. Do you remember whether it was leaking in the same boiler that these rings were to be put on? A. Yes.

Q. Are you quite clear that it was not something said to you at the time that new boilers would soon be put into this vessel? A. They said something about it.

Q. By the captain, was it not? A. The captain said so, yes.

Q. Didn't he state that he wished to triple the en- 697
gines when he returned home? A. Yes.

Q. Of course if you put in triple expansion engines you have to have boilers adapted to the higher pressure, and new ones anyhow then? A. We put new ones anyhow.

Q. These boilers were only adapted to lower pressure? A. Yes.

By the Court:

Q. When did he speak of having triple expansion 698
engines? A. I think on the same day I made the examination.

Q. When did he speak of having it put in? A. He thought when he went home next.

Q. Do you mean for completing that trip? A. After completing his charter.

By Mr. Kirlin:

Q. You mean when he went back to Europe? A. Yes, sir. 699

By Mr. Putnam:

Q. Wasn't that the reason that you permitted him to make these alterations, which were of a more temporary nature, instead of putting in new boilers? A. No, that had nothing whatever to do with it; that was merely a casual observation of the captain which was not official, I might say.

Cross-Examined by Counsel for Claimants:

700

By Mr. Kirlin:

Q. You wouldn't allow an unfit engine to go out there because they expected to put in a new one at some future day, would you? A. No.

By the Court:

Q. When did the captain tell you this? A. He told it to me after I had examined the boilers.

Q. Before you made your report? A. Yes, sir.

701 By Mr. Kirlin:

Q. You examined the furnaces again at the end of that voyage and again a year afterwards? A. Yes.

Q. Had the depression increased? A. No.

Q. Have you ever said anything further about putting in the rings? A. No.

Q. Or ever considered those necessary? A. No, I have not.

Q. If this leakage at the patch had been of any considerable extent or importance wouldn't you have been
702 likely to have noted it on your report? A. Yes, sir; I would have noted it.

Q. The reason you didn't was because it was a minor matter and of no particular consequence? A. Yes, sir.

Q. The engines were compound at the time, were they? A. Yes, sir; they were compound.

703 James A. Crossman, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. Putnam:

Q. You have been in the United States Navy? A. Yes, sir.

Q. How many years? A. Not quite three years.

Q. You have been in the merchant service how many years? A. About thirty-one years.

Q. You are now in command of what vessel? A.
704 *Britannia*.

Q. That is the vessel that is now going out to Brazil? A. Yes, sir. She is re-named the *America*.

Q. You have as master mariner been frequently in the West Indies and Caribbean Sea. A. Yes, sir.

Q. You have made voyages between New York and the ports of Colon and other ports in the Caribbean Sea? A. One voyage to Colon.

Q. Were you ever in a regular line running to Central America? A. To Colon; yes, sir.

Q. Which line was that? A. Pacific Mail Line. 705

Q. How long were you in the Pacific Mail service? A. Only one voyage.

Q. Have you examined the translation of the log-book of the *Ceres* for the two voyages of March and April and May of 1892? A. I read it over. It was some time ago; yes, sir.

Q. Have you put down on the charts the positions of the vessel each day as stated in the log? A. The position from the log; yes, sir.

Q. And you have two charts here, one of each voy- 706
age? A. Yes, sir; for the two voyages.

Q. I notice that one chart has marked a track in red ink and one in black ink? A. One is the outward and one the homeward voyage.

Q. The homeward is black ink and the outward red ink, is it not? A. The outward route is in black and the homeward route in red.

The charts are offered in evidence and marked: Exhibits 74 & 75 for the eighth voyage; 76 & 707
77 ninth voyage.

By the Court:

Q. Have you indicated on the chart the nautical miles travelled between each point? A. That is the position on the chart and also the memorandum.

Q. You have not marked it on the chart? A. No, sir; that is a separate paper.

Mr. Putnam: The dates are put on each day at noon. 708

Q. To correspond with the log? A. Yes, sir.

Q. Does the observation state "noon"? A. Yes, sir.

Q. Taken and platted each day? A. Taken and platted each day; yes, sir.

Q. Does the log show observations each day at noon? A. Yes, sir; where they have taken them the log would show it. There were one or two days, I believe, when they had none.

709 Q. One or two days there were that they had no observations at noon? A. I believe so; yes, sir.

Q. Then did they compute dead reckoning? A. Yes, sir.

Q. Have you noted on this chart which were by observation and which dead reckoning? A. Yes, sir. Each day's work is marked whether dead reckoning or not, and the memorandum also states that.

By Mr. Putnam:

710 Q. You have here the letter "C"? A. That means chronometer; an observation position taken by observation.

Q. Where you have the letters "D R"? A. Dead reckoning.

By the Court:

Q. You haven't put the "C" down for anything else than noon observation? A. By the chronometer observation as marked in the log-book.

711 Q. The "C" isn't put down for any morning observations, is it? A. Only where these are put down "position by chronometer."

Q. On this chart have you got any marks to indicate position except what you supposed to be at noon? A. Only what they have in here. That is supposed to be the ship's position at twelve o'clock.

Q. Then you haven't any other? A. No, sir.

Q. The "C" means, as I understand, it is the position at the true local meridian? A. Yes, sir; twelve o'clock.

712 Q. When taken as the log shows by observation? A. Yes, sir; the true position at twelve o'clock.

Q. At true noon? A. Yes, sir.

Q. And is indicated by log from actual observation? A. Yes, sir.

Q. The time being when the sun crosses the meridian? A. Yes, sir.

Q. In every case you have assumed the latitude as given in the log without noting how the latitude was obtained? A. Yes, sir.

By Mr. Putnam: 713

Q. After putting down those positions as shown in the log either by dead reckoning or by observation, have you measured the distance on the chart in nautical miles from point to point? A. Yes, sir; from position to position.

Q. And that is the true distance run from the position at noon each day to noon the next according to the log?

Mr. Kirlin: I object that this testimony, this proposed line of examination of the chart distances run from day to to-day is immaterial, as the guarantee does not undertake that the vessel shall make 11 knots per hour on the chart, but only 11 knots per hour through the water 714

Q. Have you here in your handwriting the figures showing the distance each day and the position? A. It is here in ink; yes, sir.

Q. The ink is your writing, the pencil memorandum you have nothing to do with? A. No, sir. 715

Q. That applied to the outward voyage and the homeward voyage, of the two voyages? A. Yes, sir.

The paper is offered in evidence.

The same objection.

The Court: Ask him further about the computation.

Q. Is that a correct statement of the measurements in nautical miles from point to point? A. Yes, sir; according to the positions given in the log-book. 716

Q. There is one day here, the 16th and 17th of April, where there is apparently a mistake in the log-book? A. Yes, sir; that is undoubtedly an error.

Q. And you have put it in as the log shows? A. As the log shows; yes, sir.

By the Court:

Q. What is the nature of the mistake? A. Just about the difference of a degree; it is undoubtedly an error. There are two or three clerical errors.

717 By Mr. Putnam:

Q. Does that make any difference in the total mileage? A. No, sir.

Q. Do you find a difference between these miles that you have measured and the miles that appear to be logged there? A. Yes, a decided difference. I judge that it was caused this way, your Honor, by placing the number of miles in the log-book that the log had reeled off, the patent log, and not what she measured from position to position daily.

718 By the Court:

Q. Is there any regular percentage that is ascertainable? A. All logs err some.

Q. I mean on this ship; do they all bear a certain percentage? A. There is not but one or two that is very close to the actual position from day to day—the entry in the log.

Q. Then the variation is not uniform. Is the variation of the log entries from your measurements a uni-
719 form variation or irregular? A. No, sir; they vary some from day to day according to the ship's run, but the positions do not vary so much as the number of miles entered in the log.

Q Is that difference a uniform percentage or is there no uniformity of percentage? A. There is no uniformity of percentage.

By Mr. Putnam:

Q. How do you correct a taffrail log that errs, how do you determine its error or variation? A. Some-
720 times the propeller may be the slightest particle or shade bent; there is a model put on board, a metal model, in order to have all the propellers just exactly one pitch.

Q. You mean the little propeller in the taffrail log that trails astern on the line? A. Yes, sir.

Q. If it gets a little bent it will make a difference in the mileage? A. Yes, sir.

Q. You know the actual distance from Barnegat up to the Scotland Lightship? A. Yes, sir.

Q. How many nautical miles? A. About forty-two. 721

Q. It is logged here on this log: "Passing Barnegat 2060 miles, passing Scotland Lightship 2116," a distance of fifty-six miles. A. Is that Barnegat lying west?

Q. See what it says? A. It doesn't state what the bearings of Barnegat Lighthouse was, but we assume it was abeam.

Q. As a nautical man, would you consider you had passed a lighthouse unless you had it abeam? A. No, sir.

Q. You have figured up here on this paper that I 722
have offered not only the number of knots each day, but you have figured up the total and divided by the number of hours as shown to get the average? A. Yes, sir.

Q. And it is a correct measurement of the distances according to the chart? A. Yes, sir.

MR. PUTNAM: I ask to have the paper marked now.

Objected to on the same ground, that the guarantee relates to speed through the water; 723
that if it is a guarantee at all it is only a guarantee as to capacity. Objection overruled.

It is marked Exhibit 78.

MR. KERLIN: The original scrap-log seems to have been 2,106 from Barnegat to Scotland Lightship instead of 2,116. It is an error in transcribing into the main ship's log.

By Mr. Putnam:

Q. On the last page of Exhibit 78 you have given 724
the distances from New York to different points, are those the correct distances run? A. That is the distance that shipmasters take from point to point, from New York to Colon; in running a steamship from New York to Aspinwall they measure on the chart.

Q. By ordinary courses? A. By ordinary courses.

CROSS-EXAMINED by Counsel for Claimants:

By Mr. Kerlin:

Q. Do those courses differ any from courses ——?

725 A. Those are the distances; that is, the actual distances from point to point, the usual course down.

Q. Does the usual course down depart from the courses you have platted on these charts? A. Yes, sir.

Q. By the usual course down you mean the theoretical course on the chart, don't you, I suppose? A. Yes, as straight a course as you can make from point to point.

Q. Actually it happens every day that a vessel departs somewhat from the theoretical course? A. It
726 may happen, but——

Q. Answer my question.

THE COURT: He now asks you about a theoretical course. I don't know what he means.

THE WITNESS: I don't understand what he is trying to get at.

THE COURT: You must notice what he asks and answer his questions if you can.

Q. (Repeated): Actually it happens every day that a
727 vessel departs somewhat from the theoretical course; what I mean by theoretical course is, if you were asked to put down on the chart the usual course to Colon you wouldn't put it down without any jogs from day to day, wouldn't you; you would put down a line, a course of comparatively straight lines between points? A. As long as you could carry that course you would do so.

Q. Actually from day to day on a steamship you wouldn't be able to hold that line as straight as you
728 would put it on a chart, would you? A. Very close to it, sir.

Q. Do you think 34 miles an excessive deviation on a voyage of 1,970? A. That depends on what courses have been steered and whether there is any currents or not.

Q. There is not enough difference between the courses he actually made and the usual courses to excite suspicion that he hadn't proceeded on the voyage in the usual way with diligence, is there—34 miles on 1,970? A. There is only one course there——

Q. Please answer the question. You say the course on the usual voyage would be 1,970 miles and that the steamer made 2,004 miles? 729

MR. PUTNAM: One is taken from the Bar and the other from New York City.

THE WITNESS: 1,970 is from New York City.

Q. There is not enough difference between the courses he actually made and the usual courses to excite the suspicion that he hadn't proceeded on the voyage in the usual way with diligence, is there—34 miles on 1,970? A. No, that wouldn't be really out of the way—34 miles in a 2,000 mile voyage. 730

Q. Then he did practically proceed on about the usual course to Colon according to the chart? A. According to the chart, yes, sir; except that he was off some from the regular course that is all. He naturally took the same passage any other ship bound to Colon would take to go through there.

Q. Your only criticism is he wavered too far from the line of the usual course? A. It rests here; that I laid down the position on the chart to show the distance the ship had made compared with the actual distance to Colon from New York. I am not criticising. 731

Q. That doesn't answer my question. A. I beg your pardon.

THE COURT: The witness has taken the distance as platted by your log and giving the miles she made in doing it.

THE WITNESS: That is it. 732

Q. Then I understand the courses you have outlined on the charts from the log show 2,004 miles in the log itself, whereas on the chart it only shows 1,970 miles; is that correct? A. No, sir; no, sir; no, sir.

THE COURT: The course he took shows by the chart 2,004, whereas the usual course would be about 30 miles less, that is all he says; but your log miles are a great deal more than usual.

MR. PUTNAM: By the abstract of the log which

733 they furnished us giving a total of the run, they make 2,200 miles just, and by measuring from point to point it makes 196 miles less; that is the error which we say is made. Coming up the distance is 2,116 miles, when our total, as measured by the captain, is 1,971 miles almost the same percentage of error. Going out on the next voyage is a similar difference.

Q. Could the ship have made that extra distance by
734 being deflected by wind and weather and still have been at the point as shown on the chart each day?

THE COURT: What extra distance?

Q. The extra distance shown in the log over that shown on the chartered measurements, could that be accounted for by currents, winds and other circumstances of the voyage? A. I should say the distance taken from the patent log and entered in the log-book——

735 By the Court:

Q. Can it be accounted for by currents? A. Not with a beam current, no, sir; it would with a head current.

By Mr. Kirlin:

Q. It might by cross seas? A. No, sir.

By the Court:

Q. Are there head currents enough to account for
736 it? A. No, sir; not going down there; there is beam currents in the Caribbean Sea but not head currents.

By Mr. Kirlin;

Q. Wouldn't a beam sea cause a vessel to make more miles between two fixed points than she has on the chart—or storm? A. A vessel wouldn't make the position from day to day—twelve o'clock from day to day would be the actual distance that ship had made.

Q. The distance on the chart, yes. A. Your posi-

tion on the chart is what you get from your observation. 737

Q. The point is, might she not have made between those two points a great many more miles through the water than from one point to another on the chart? A. That shouldn't count. If the the ship had not been on a straight course for 24 hours and the patent log showed more miles than what the position did for the 24 hours from observation—if she hadn't been on a straight course of course the log would show more miles and the ship would have made more miles, 738 steamed more miles than those two positions show.

Q. In putting those positions on the chart did you take any account of the deviation in course as shown by the log? A. Not altogether; in one or two places, yes, sir; down in the Caribbean Sea.

Q. Why didn't you at all times? A. As far as I could I did, sir.

Q. What do you mean by that? A. As far as the courses were laid down there from position to position. 739

By the Court:

Q. As far as the courses shown in the log, showed changes, you took account of them? A. Yes; I assume from here to Watlings Island a man would steer as straight a course as he could with nothing in the way.

Q. Is there anything in the log to show he doesn't? A. No, sir. His position puts him straight on the courses. 740

By Mr. Kirlin:

Q. In putting your course there you relied somewhat on your own knowledge? A. No, sir; I beg your pardon; I simply went by the log book. I am not criticising the captain or anybody else, he may have had his reasons—every shipmaster has.

Q. Would not a stiff breeze throw a small ship like the *Ceres*, of 500 tons net, somewhat out of her course? A. Liable to if she is in ballast.

741 Q. Or light? A. Or light loaded; but if she is loaded it wouldn't be liable so much.

Q. A small ship wouldn't maintain as steady a course.

RE-DIRECT by Counsel for Libellants:

By Mr. Putnam:

Q. Suppose there is a current or stiff breeze or other cause affecting the ship, how does the captain alter his course to allow for the deflection of the current?

742 A. Simply—if he wishes to make a due south course and there is easterly current or gale of wind setting to the westward he would probably alter his course half a point or so, or according to his own judgment, to allow for that, to make a due south course.

Q. To allow for leeway? A. Yes, sir. At the end of the 24 hours he would be making a straight line.

By the Court:

Q. Wouldn't the course as given by the log when compared with the positions at successive noons show

743 he had steered so as to allow for some deflection? A. It would show, yes, sir.

Q. If the positions on the map as platted down show the courses shown in the log it must either show a variation of the compass or that he had deflected for the purpose of counteracting some current? A. Yes, sir.

By Mr. Putnam:

Q. Is there any current between here and Colon

744 that would make a difference of 200 miles between the actual distance over the ground and the distance through the water? A. Not that I am aware of.

Q. How is it between Colon and the Navassa Island? A. The current is easterly and westerly; when you leave the coast probably 40 miles or so the current sets strong to the eastward, above that to the Navassa it sets to the westward; but a steamship going from Colon to Navassa would probably steer one course and one current would offset the other. I have found it so.

Q. Coming from Navassa to New York how is the current? A. Westerly along through the islands. It is always northwesterly coming along there, you can steer to the northwest. 745

Q. In the Gulf Stream how is the current? A. Then it sets to the northward and eastward.

Q. That is variable? A. That is variable for a short distance, probably 120 miles until you get across.

Q. What is the strongest current in the whole distance? A. In his favor? 746

Q. Either in favor or against? A. The current in the Caribbean is ruled a great deal by the state of the Trades; strong Trade a strong current, it will average from half a knot to probably a knot and a half; that is in the Caribbean sea.

By the Court:

Q. That is the strongest current there is anywhere in the track of this vessel? A. That is in the Caribbean Sea. 747

Q. North of the Caribbean Sea how is it? A. North of the Caribbean there is a slight current in favor of any vessel.

Q. How much? A. Probably a quarter to half a knot.

Q. Then that is the strongest in the Caribbean Sea? A. But that is straight across, it doesn't favor the vessel, understand.

Q. It doesn't retard the vessel either? A. She is cutting right across it. 748

By Mr. Kirlin:

Q. In making allowance for that, or beam wind, she would naturally go more miles through the water than the straight line between the points? A. Yes; but going from Navassa to Colon usually you steer almost a straight course, one current offsets the other and brings you right down to Colon; that is your westward current for probably 530 or 540 miles will set you westerly slightly and then you strike a strong easterly

749 current that sets you easterly and offsets the westerly current.

By the Court:

Q. The effect of that would be that the ship makes less miles than the chart would show? A. No, your Honor; I think she would make little more than what the chart would show. The current didn't carry the ship, it set her off so that she actually makes a curve that way to the westward with the westerly
750 current and then back to the eastward with the easterly current.

John Haug, recalled for claimants:

By Mr. Kirlin:

Q. What is the deep draft of this steamer by the Lloyds' rule? A. 15 feet 9 inches.

Q. How is that ascertained? A. By complicated
751 formula that is ascertained.

Q. Who ascertains it? A. There is a party in England called Load Line Commission.

Q. Is it marked on the steamer? A. It is marked on the steamer's side, yes, sir.

Q. Where is it? A. Amidships on the side.

Q. That means her extreme deep draft for safety? A. Yes.

Q. Mean draft? A. Mean draft, yes, sir.

Q. Whether she is loaded by the head or stern? A.
752 Yes, sir.

Q. How often do the engines and boilers of a steamship employed as this one was require to be examined? A. In my experience they would require about once a year I think.

Q. How often ought boilers to be scaled and attended to? A. That depends very much upon the state in which they are kept; it would be hard to say.

Q. An ordinary engineer would do that, I suppose, every time they have an opportunity? A. I suppose they do it as often as they have a chance.

Q. Would a voyage of three or four weeks make any appreciable difference either in accumulating scale or depreciating it? A. It might under certain circumstances. 753

Q. Did you see inside of the boilers on the two occasions? A. Yes, sir.

Q. And had the scale increased any appreciably during the three or four weeks of that voyage? A. I don't think it had very much.

Q. Would that have any tendency to make the tubes leak? A. Yes. 754

Q. How? A. It would generally accumulate.

Q. I mean the increase? A. The increase, yes; it would generally accumulate around the ends of the tubes and of course prevent the access of water to the iron and in that way overheat it.

Q. Do you know whether those tubes were refitted before the steamer went away? A. They were refitted I think before she went away.

Cross-Examined by Counsel for Libellants: 755

By Mr. Putnam:

Q. I didn't quite understand what you said about load line; is it indicated on the outside of the vessel? A. Yes.

Q. By what? A. The mark.

Q. What kind of mark? A. A round circle with a line through it.

Q. Are you quite sure you ever saw any such mark here? A. Oh, yes, certainly.

Q. Do you mean to say the load line disc, which is the round circle with the line through it, is put onto Swedish vessels? A. It is put on a certain type of vessel, if they are classed in Lloyd's Register. 756

Q. Isn't that what is called the Plimsoll mark? A. No.

Q. The circle with the line through it? A. No. It is also the Plimsoll mark, it is vulgarly called the Plimsoll mark, but it is really the load line put on by Lloyds' Register.

757 Q. Isn't it square with a line through it? A. It was square but it is now round.

Q. When was it changed? A. In December, 1891, when the British Load Line Act went into effect.

Q. That was changed only by vessels that were in England? A. No, on all vessels classed by Lloyd's Register.

Q. If a vessel was here in December, 1891, how would that be changed? A. As soon as she went under survey.

758 Q. She didn't undergo a survey, as far as you know, until after the 18th of May? A. I think that is just at the time it was done, as far as I remember.

Q. So there was no load line in a circle on this vessel at the time you speak of? A. There was a load line with a square; that used to be the form before, it is the same line.

By Mr. Kirlin:

Q. Whichever it was it was in the same place? A.
759 Yes, sir.

By Mr. Putnam:

Q. You know what is meant by displacement scale? A. Yes, sir.

Q. Look at the displacement scale of this vessel and see if you are not mistaken as to what you say the draft was? A. I don't see anything on here.

Q. You see it stated there what her draft is loaded forward-and-aft! A. But that is only—that is not official, you can put anything in a drawing.

760 Q. Doesn't that state she is classed in Lloyds? A. Yes, but it doesn't say that is Lloyds load line.

Q. Have you any record with you showing the load line of this vessel? A. It is in the Register Book; I haven't any record.

Q. And you are simply testifying from memory? A. Yes.

Q. And that Register Book is issued in London, is it not? A. Yes.

Q. Issued the 1st of January every year? A. The 1st of July.

By Mr. Kirlin: 761

Q. What happens if the vessel is loaded down lower than the 15-foot line? A. Her class is withdrawn when that happens.

By the Court:

Q. Are propellers usually loaded on an even keel? A. No, they generally have a little drag by the stern.

Q. How much difference usually between the stem and stern for a vessel of this size? A. It might be about a foot difference. 762

Q. When you said the draft was 15.9, what did you mean? A. It is the mean draft, average draft.

Q. By that do you mean half way between the draft forward and the draft aft? A. Exactly; that is it.

Q. The draft 15 ft. 9 is amidships? A. Yes, sir. I think I testified that the load mark was put amidships.

Q. Which would be equivalent to 16.3 aft and 15.3 forward, about? A. About, yes, sir.

By Mr. Putnam: 763

Q. That depends a good deal on the model, some would have to be deeper aft to cover the propeller? A. Yes. It isn't important I think one way or the other.

Q. What you record is the mean difference between the two? A. Yes, sir, exactly.

The Court: If there is a difference of two feet between forward and aft that would make the mean draft what he states.

764

Norman W. Mowbray, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. Putnam:

Q. Did you hear the testimony on Wednesday about the awnings that were on the ship? A. I did.

Q. When you were on the ship in the eighth and ninth voyages did the awnings go to the entire length of the ship? A. No.

765 Q. How were they placed with respect to the hatches? A. There was one awning over each hatch.

Q. Do you remember the material that those awnings were made of when you were on the vessel? A. Made of light canvas.

Q. Were they No 3 duck as testified to be now? A. No, sir.

Q. Were there any awnings on board the vessel that were in use that you saw on either of those voyages, of No. 3 duck? A. To the best of my knowledge, no.

766 Q. How would you describe the canvas that was used for awnings when you were on her those two voyages? A. I would not like to say what number it was because I don't recollect distinctly, but it wasn't more than, it wasn't heavier than, No. 6.

Q. The number of canvas run according to weight which way? A. The smaller the number the heavier the weight.

Q. On the first trip, that is voyage No. 8, coming up was there any weather that required the forward
767 hatch to be closed entirely? A. No.

Q. Was there anything unshipped or damaged or carried away on the deck of the ship at all on that voyage? A. Nothing.

Q. The ninth voyage was fine weather all the way completely, was it, the last voyage? A. Yes, sir.

Q. Do you know about who ordered these bananas to be cut out there at Colon? A. I suppose the agent gave the order.

Q. On the eighth voyage do you know who ordered
768 the bananas to be cut? A. The captain gave the order to the agent at Colon, and he I suppose ordered them cut directly.

Q. On the ninth voyage were you present when the bananas were put on board the ship? A. Yes, sir.

Q. And Mr. Henry Wessels was there also? A. Yes, sir.

Q. Were there any bananas that were rejected by the officers of the ship and sent ashore that were afterwards taken back from the shore and loaded on the

ship? A. None that I know of; I don't believe any 769
bananas that were rejected came back.

Q. This forward hatch on the *Ceres* was how near the bow? A. I couldn't tell you the distance in feet; it might have been 15 feet from the bow.

Q. And how much height of coamings was there around the hatch? A Maybe a foot and a half.

Q. Was there any covering over it on the voyage up, the eighth voyage, except the awning above it? A. None.

Q. How large was the opening? A. I will say 5 by 770
7.

Q. You have testified that there was some spray occasionally that came on board, did the vessel ship any sea at any time on that voyage? A. No, sir.

Q. You have been, as you have testified, a quartermaster on vessels? A. Yes, sir.

Q. How many years experience at sea have you had? A. Nearly fourteen.

By the Court: 771

Q. When you say the awnings didn't cover the whole vessel I can't tel much what you mean by it; that would be true if didn't cover but six inches; is that what you mean? A. No, sir.

By Mr. Putnam:

Q. From the bridge aft on the *Ceres* how much of the deck was covered by any awning in rainy weather coming up on either of those voyages? A. The length of the after hatch had an awning over it, but it didn't 772
reach out to the side of the ship; it extended the length of the hatch and then there was a space from the after part of that hatch to the forward end of the after house that was not covered by awnings.

Q. And that awning on the after hatch was what shape? A. That was square.

Q. Was there any awning that went clear aft to the taffrail at that time that was set? A. I don't remember; I wasn't interested only in the awnings that protected the fruit.

773 Q. What awnings, if any, were over the main hatch? A. That would be No. 3.

Q. Then, as I understand you, there were awnings simply placed above the hatches? A. Yes, sir.

Q. And one of those you testified did not fully cover the hatch? Which one was that? A. The awning over No. 3 hatch.

Q. Where do you mean by No. 3? A. The third hatch from the bow.

Q. Forward of the bridge or aft of the bridge? A.
774 Just forward of the bridge.

Q. Did any of the awnings go clear from side to side of the ship at that time? A. No, sir.

Cross-Examined by Counsel for Claimants:

By Mr. Kirlin:

Q. Where did they go to? A. Probably 18 inches or two feet from the sides of the ship; some of them, others of them were not so wide.

Q. How far did they overlap the hatch? A. Three
775 or four feet maybe.

Q. How far did they overlap the hatch fore-and-aft? A. Very little, I couldn't say how much.

Q. How many feet? A. Probably not one foot.

Q. Who set the awnings? A. The mate and I and the sailors.

Q. There were other awnings on the ship besides those you set, were there not? A. No.

Q. How do you know that? A. Because the mate said those were the awnings they had always used,
776 that they had no others.

Q. Who said that? A. The chief officer of the *Ceres*, Mr. Holmquist.

Q. Did you apply to the captain at all? A. No.

Q. He was aboard, wasn't he? A. Certainly.

Q. You sat at the table with him? A. Every meal.

Q. Did you make any complaint to him about the awnings? A. No.

Q. Why didn't you? A. It was the mate's place.

Q. Under the charter party it was your place, wasn't it? A. No, sir. 777

Q. What were you on board for? A. To make the best use of whatever was aboard the ship; for that purpose.

Q. If what was there didn't suit you why didn't you apply to the captain? A. Because, as I said, it was the mate's place to look after things of that sort.

Q. It is the mate's place to look after what is there but it is the captain's place to furnish them; did you make any complaint about the awnings being insufficient at the time? 778 A. Yes, sir.

Q. Whom to? A. To the chief mate.

Q. Did you ever say anything to the captain about it? A. I think not.

Q. How many hatches has the ship got? A. Four.

Q. You said she had three on your previous examination? A. I believe I did.

Q. Which is right? A. I am right now.

Q. Where was the third? A. Counting from forward the third one was right forward of the bridge. 779

Q. Where from the engine-room was the third? A. The first one forward of the engine-room; and there was one hatch aft of the engine-room.

Q. Now it was the third that had a small awning over, was it? A. Yes, sir.

Q. How long have you been in Messrs. Wessels' employ? A. Eight months.

Q. Before that? A. About eight months before that.

Q. What trade had you been in? A. In the fruit 780 trade.

Q. Where? A. Between Guatamala.

Q. What ship? A. The steamer *Jamaica*.

Q. Did you select the fruit on the *Jamaica*? A. No.

Q. Who selected it? A. We didn't select any fruit while I was in her.

Q. How did you get any fruit on board? A. We lost the steamer before we had a chance to load her.

781 Q. Were you ever on a ship that carried fruit before the *Ceres?* A. Yes, sir.

Q. What ship? A. The steamer *America.*

Q. Who selected the fruit? A. I helped te select.

Q. Did you help select the fruit for the *Ceres?* A. Yes, sir.

Q. Both times? A. Both times.

Q. And you helped set up the awnings, did you? A. Yes, sir.

Q. Is there any difference in the size of the four
782 hatches of the *Ceres?* A. Yes, sir.

Q. What is the difference? A. Some are larger and some are smaller.

Q. Which is which? A. The forward hatch, I think, was the smallest.

Q. And No. 2? A. No. 2 was little larger, and No. 3 was probably the largest hatch of the lot.

Q. Was there any difference in the size of the awnings? A. Oh, yes; the awnings were apportioned to the size of the hatches, the largest awning was over
783 the largest hatch.

Q. I understood you to say that the trouble with the awning was it was round at the end; is that right? A. That is true.

Q. And did not cover the hatch? A. And did not cover the hatch.

By the Court:

Q. Which hatch was that? A. No. 3 hatch.

Q. At every hatch openings were the canvases
784 rounded? A. No, sir.

By Mr. Kirlin:

Q. Did you have anything to do with shifting the awnings at sea? A. Yes, sir.

Q. Who directed how they should be shifted? A. Usually I did it myself.

Q. What experience have you in judging of the weight of canvas? A. I have followed the sea for fourteen years and have had to handle it and sew it.

Q. And was there any mark on this canvas to indicate its number? A. I didn't notice any mark on it.

Q. You are giving us your judgment I suppose as to 785
the number? A. Yes.

Q, You can't swear positively it wasn't No. 3 when it was put up first? A. Yes, I am willing to swear that it was not No. 3 canvas, that it was lighter than No. 3.

Q. You didn't keep any log of the weather from day to day, did you? A. No, sir.

Q. You are testifying generally from your recollection? A. From my recollection, yes, sir.

Q. How many awnings were there altogether on the 786
ship? A. Four, I think; there may have been another one farther aft; I won't say positively whether there was an awning aft of the aftermost hatch or not, but there were at least four.

Q. How many hatches did you load into on the ninth voyage from Colon? A. I don't remember.

Q. Was it more than two? A. Yes, I think we passed fruit into all of the hatches.

Q. Then fruit that was rejected at one hatch might
have gone around through one hatch and gone to an- 787
other without yur knowing it? A. No.

Q. You couldn't be in more than one place at once? A. No, but there was always someone at the hatch where it was being loaded.

Q. But you wouldn't know whether it had been rejected at one hatch or not? A. No, but whatever defect——

Q. That is enough.

THE WITNESS: I don't think no is enough for that question, if your Honor please. 788

THE COURT: You can finish the answer.

THE WITNESS: I was going to say whatever defect in the fruit would cause it to be rejected the first time would cause it to be rejected when it came again.

By Mr. Putnam:

Q. Do you remember whether on the ninth voyage the fruit came from cars? A. It did.

Q. And came down alongside the steamer? A. On the dock, yes.

789 Q. Do you know what became of the fruit that was rejected? A. It was left on the dock; I am sure of that.

By Mr. Kirlin:

Q. How did the captain come to be ordering this cargo, this fruit? A. I presume he had orders from Mr. Wessels.

Q. Didn't you attend to the fruit department? A. Not to the ordering of it, no.

790 Q. Who paid for it? A. Mr. Wessels & Co., I guess.

Q. Was he there? A. On the last voyage, yes.

Q. Who was there and paid for the fruit on the occasion when the captain ordered it? A. The captain probably paid for it, gave the money. Of course Mr. Wessels paid for the fruit, it was their fruit.

By Mr. Putnam:

Q. You left the employ of Messrs. Wessels & Co. at

791 what time? A. Shortly after the last voyage of the *Ceres*.

Q. That is after the 18th of May? A. Yes.

Q. Have you been in their employ since? A. No, sir.

Francis A. Martin, being duly sworn and examined as a witness for the libellant, testifies:

792 By Mr. Putnam:

Q. You have been a marine surveyor in this port for how many years? A. Twenty-three years.

Q. And you have followed the sea previously to that? A. Yes.

Q. As marine surveyor do you survey vessels as to the loading them? A. Sometimes.

Q. You are familiar with the loading of all kinds of vessels, I suppose, steamers as well as sail vessels? A. Pretty well familiar with it, I think.

Q. You are familiar with the terms "deep loaded" 793
and "light loaded," are you not? A. Yes, sir.

Q. Suppose you have a vessel that carries 820 tons deep loaded, what tons weight would, in your judgmeet, be understood as light loaded?

Objected to as matter of interpretation of words, and that the witness is not shown to be an expert in the trade. Objection overruled.

A. Do you mean by deep loaded, overloaded or to
her draft? 794

Q. I mean to her ordinary full loaded draft; she carries 820 tons dead weight of cargo and coal? A. In the general ordinary meaning of the term "light loaded," I should say a hundred tons less than that would make her light loaded.

Q. That would be 720 tons, or less than that would be light loaded? A. I should say so.

Q. You are a surveyor for the different associations among which is the—what is the association you are a surveyor for? A. The New York Board of Under- 795
writers and the Record of American and Foreign Shipping.

Q. And how long have you been a surveyor for them? A. I have been surveyor for the Record of American and Foreign Shipping since 1867; the New York Board of Underwriters since 1875.

Cross-Examined by Counsel for Claimants:

By Mr. Kirlin:

Q. Did you ever make an estimate of that kind in your 796
mind before this case was brought to your attention? A. No, sir.

Q. You are often called on to survey the condition of vessels, are you not? A. I am; I am doing more of that than anything else.

Q. Were you ever called upon to determine whether a vessel was light or heavy laden before this time? A. Oh, yes.

Q. When? A. I can't tell you exactly when, but I am very often called upon.

797 Q. What basis do you take to determine that? A. There is a rule for the draft of vessels, different vessels of different depths.

Q. There is a rule for deep draft; that is the only rule there is, isn't it? A. Oh, yes; a rule for the draft of a vessel to load it; there is no rule for light loading or heavy loading or anything less than that; it is matter of judgment.

Q. What do you base your judgment on? A. I base my judgment on the fact that a very little less than
798 loading to her draft will make a vessel very much easier and more comfortable, consequently more seaworthy.

Q. After you got 720 tons on board a vessel that would carry 820, how much deeper would the additional hundred tons put her in the water? A. That I don't know; I don't know the model of the vessel; I don't know how much she takes to put her down an inch.

Q. Wouldn't you need to know that to say whether
799 a difference of a hundred tons would make her heavy or light laden? A. Oh, no; not necessarily for a small vessel; not necessarily for a small vessel like that.

Q. How much difference do you think a hundred tons would make in the draft of the *Ceres;* do you know her? A. No, I don't know her except as I have heard her description here now.

Re-Direct by Counsel for Libellant:

800 By Mr. Putnam:

Q. You made an allowance that you think was ample to cover the distance between light loaded and heavy loaded? A. I think I have.

Q. Supposing you were informed that the vessel carried 855 tons cargo and coals on some of her voyages, would that change your estimate of light loaded? A. No, no different from that. I think I have made it very full.

Q. Very full allowance? A. Yes, sir.

801

GEORGE T. HILTON, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. Putnam:

Q. You were the stevedore that loaded the *Ceres* while she was running under this charter to Messrs. Wessels? A. Yes, sir.

Q, You have followed the sea also and been an officer of ships, have you not? A. Yes, sir; not of steamships.

802

Q. Officer of sailing ships. You have handled bananas for about how many years? A. About fifteen years.

Q. Do you remember the bananas that came here on the eighth and ninth voyages of the *Ceres* in April and May, 1892? A. I don't know exactly in particular as I recollect anything special about that.

Q. You had to do with taking them out of the ship? A. I did; yes, sir.

803

Q. You have loaded the *Ceres* with cargo and discharged her every time that she came to this port? A. For Mr. Wessels, yes, sir.

Q. You have also loaded and discharged other steamers with bananas, have you not? A. Yes, sir.

Q. Great many others? A. Quite a few.

Q. Are you familiar with the capacity of steamers to carry bananas the way they were carried on this steamer? A. Quite familiar; yes, sir.

804

Q. What would be the capacity of the *Ceres* to carry bananas stowed in the same way that they were on the eighth and ninth voyages; how many bunches would she carry if she carried exclusively bananas? I am only referring now to the last two trips. A. About 24,000 bunches.

Q. You had to do with putting the coal into this ship when she was coaled here? A. Yes.

Q. And it was Pocahontas coal every time except once? A. Yes.

Q. What was the quality of that coal? A. The quality of the coal was very good.

805 Q. Did you use it at all in your hoisting engine? A. I use it all the time in my hoisting engine.

Q. What was it as to being dirty or not; in the usual shape for Pocahontas coal? A. The *Ceres* always got just as good as any other ship.

Q. At the same time you were coaling other ships with the same coal? A. With the same coal, and am at the present time.

CROSS-EXAMINED by Counsel for Claimants:

806 By Mr. Kirlin:

Q. Isn't there a difference in the size of the bunches of bananas that come from Colon and from other places from which Messrs. Wessels imported bananas? A. Yes, sir.

Q. It depends on the bunches how many she carries, doesn't it? A. Yes.

Q. And how they are stowed, how closely they are stowed? A. Yes, sir.

807 RE-DIRECT by Counsel for Libellant:

By Mr. Putnam:

Q. When you say 24,000 you are referring to the bunches such as she brought up on those last two trips? A. I am; yes, sir.

Q. And stowed in the way they were stowed at that time? A. Yes, sir.

Q. How were they stowed then? A. On their end.

Q. That is standing up? A. Yes, sir.

808 Q. If they were laid down of course she could carry more? A. Yes, sir.

RE-CROSS by Counsel for Claimants:

By Mr. Kirlin:

Q. Those came out rather over-ripe on both voyages, didn't they? A. Oh, yes, there was a little more than an average of over-ripe cargo.

Q. Were they rotten? A. No, sir, not rotten, ripe.

Q. What did that indicate? A. That indicates that

the fruit ripened on the passage up; that is all the in- 809
dication there is about it.

Q. Or else that it was a little bit over-ripe when shipped? A. Possibly.

Q. You say it was not rotten on either of those occasions? A. No, sir, not rotten. There is a great difference between rotten and ripe fruit.

Nels Olsen, being duly sworn and examined as a 810
witness for the libellant, testifies:

By Mr. Putnam:

Q. You are in the employ of the Pennsylvania Railroad? A. Yes.

Q. And you were in April and May last year? A. Yes, sir.

Q. How long have you been in their employ? A. About four years.

Q. What were your duties in April and May last
year? A. Shipping freight on the pier, shipping ba- 811
nanas alongside of the steamers.

Q. Did you receive for the Pennsylvania Railroad some bananas from the steamship *Ceres* both in April and May, 1892? A. Yes, sir.

Q. Have you the original weighing cards here of the bananas of that weight? A. Yes, sir.

Q. Refreshing your recollection by those cards tell us how many bunches you weighed and how you would get at the weight of the bananas? A. I weighed ten
bunches out of each car that was loaded, five out of 812
each end, weighed average bunches and then take the average of the cargo.

Q. You weighed ten bunches out of each car, five out of each end, and you took that as the average for the cargo? A. Yes, sir.

Q. Did the Pennsylvania Railroad receive the freight according to weight? A. Yes, sir.

Q. You have there the weights of all the bunches, have you, that is of all the cargoes that you took? A. Yes, sir.

813 By the Court:

Q. Did you take those for the purpose of ascertaining the freight on weight? A. My duty is to take the weight, to give the railroad an idea of the correct weight.

Q. You took that for the purpose of getting at the rate for the purpose of computing the freight charge? A. That I couldn't tell you, I don't know anything about it.

814 By Mr. Putnam:

Q. You report the weight to whom? A. To the chief clerk.

Q. The chief clerk of the Pennsylvania Railroad? A. Yes, sir.

Q. Do you weigh the bunches yourself? A. Yes, sir.

Q. And with the scales? A. With the scales.

Q. Now refer to the first shipment, in April, just tell us what weights you have. A. I had one car 30
815 pounds apiece; one car 25; one at 24; one at 23, and one at 30; five car loads.

Mr. Putnam: That is bunches.

Q. In those five car loads were how many bunches in all? A. 50 bunches.

Q. The 50 bunches weighed; but how many were the double bunches that were shipped in those five cars? A. 1,794 bunches.

By the Court:

Q. In how many cars? A. Five car loads.

816

By Mr. Putnam:

Q. Referring to the first car of which you gave the weight, how many bunches went into that car? A. The first car? That is—I can tell on my card. I can't tell anything else—432 bunches.

Q. And out of those 432 you weighed ten as specimen bunches? A. Yes.

Q. Of which you picked five out of each end of the car? A. Five average bunches.

Q. Was that a fair average of the whole car load? 817
A. Yes, sir.

Q. You did the same with the other car loads? A. Yes, sir.

Q. Just call off the car, the number of bunches and the average weight of that car; the car that has 30 pounds average has how many bunches? A. 432.

Q. The next car, how many bunches? A. 362.

By the Court:

Q. Is that the 25 pound car? A. Yes, sir. 188

Q. The third car of the 24 pound bunches? A. 400 bunches.

Q. And the car of 23 pounds, the fourth, how many bunches? A. 400.

Q. And the last one of 30 pounds? A. 200 bunches.

Q. Aren't you mistaken about that first one? A. 432? No, sir.

Q. Then the first car had twice as much weight as the last? A. Yes, sir. 814

By Mr. Putnam:

Q. Are these bananas graded when they are put out, the different sizes coming out together or separately? A. Usually, yes.

Q. They are graded, the larger coming differently from the smaller ones? A. Yes, sir.

Q. Is that the usual way you have of weighing bananas when shipped by the Pennsylvania Railroad? A. Yes, sir. 820

Q. That has been their custom how many years? A. I couldn't say.

Q. Ever since you have been receiving? A. Yes, sir.

Q. They don't of course weigh each single bunch? A. Yes, they weigh each single bunch.

Q. Each single bunch of ten, but you don't weigh more than ten? A. No, sir.

Q. Now referring to the bananas that you received in May in the same way from the *Ceres* and give us

821 the car and weight and number of bunches. A. (Reading):

"First	car,	325	bunches,	weight	32	pounds	a bunch.
"Second	"	400	"	"	20½	"	"
"Third	"	500	"	"	18½	"	"
"Fourth	"	400	"	"	20½	"	"
"Fifth	"	500	"	"	24	"	"
"Sixth	"	450	"	"	24½	"	"
"Seventh	"	400	"	"	20½	"	"
"Eighth	"	400	"	"	20	"	"
822 "Ninth	"	150	"	"	27	"	"
"Tenth	"	400	"	"	18	"	" "

Q. Is that 3,925 all? A. Yes, sir.

Q. How much was the total number of bunches that you had? A. About 3,700.

Q. Were those weighed in the same way as those in April, that is by taking ten out of each car, as a fair average? A. Yes, sir.

Q. And weighed by you personally? A. Yes, sir.

823 Q. And reported to the Pennsylvania Railroad clerk? A. Yes, sir.

By the Court:

Q. I make it 3,925. A. 3,925, yes, sir.

By Mr. Putnam.

Q. You are referring to the original memorandum in your own writing? A. Yes, sir.

By Mr. Kirlin:

824 Q. You don't know whether the freight was paid by weight or by cargo, do you? A. No, sir; I do not.

825

CHARLES WESSELS, recalled for the libellants, testifies:

By Mr. Putnam:

Q. Besides the bananas that went to the Pennsylvania Railroad, where were the other bananas sent, at that time? A. Some were shipped on the Lehigh Valley Railroad and some went inshore in trucks.

Q. Have you made an effort to find the weighing clerk of the Lehigh Valley Railroad? A. Yes.

826

Q. Have you succeeded in finding him? A. No; he left their service some time ago.

Q. Since the month of October? A. This year.

Q. Before or since the month of October this year? A. Oh, long before this October.

Q. How did you pay freight on these bananas to the Pennsylvania Railroad? A. The only occasions that we paid the freight was when under our guarantee the railroad company called on us to pay the freight if it wasn't paid by the consignees.

827

Q. How is the freight payable by the bills of lading? A. By weight.

MR. KIRLIN: That is not the best evidence.

Q. It is always by weight, is it?

Objected to. Objection overruled.

A. The freight on bananas is always by the hundred pounds.

828

Q. In the shipment of bananas, do you, or do you not, see the bills of lading? A. Ordinarily, yes.

Q. And you have for how many years? A. Pardon me. We don't, as a rule, get bills of lading, we take the ordinary dock receipts, which can be ordinarily exchanged for bills of lading.

Q. Did you see these bananas that arrived here on the April shipment? A. Yes, sir.

Q. And you saw those that went into the Pennsylvania Railroad cars also? A. Yes.

829 Q. And those that went to the Lehigh Valley? A. Yes.

Q. And you saw those that went ashore? A. Yes.

Q. What, in your judgment, was a fair average weight of those bananas, taking the whole shipload through?

Objected to, that it does not appear that the witness weighed a single bunch of them.

Question withdrawn.

830 Q. How did the other bananas contrast in size with those that went into the Pennsylvania cars? A. Which others?

Q. The others that went to the Lehigh Valley?

THE COURT: Those that didn't go to the Pennsylvania Railroad.

Q. I am referring now to the first shipment, the April voyage No. 8? A. My recollection is, I think there were more large went on the other float and in
831 shore than there were on the Penn.; that is, more of the large grade went on the Lehigh float and on the dock.

Q. Are you familiar with the weight of bananas? A. Oh, yes, sir.

Q. Are they sold by weight here? A. Never.

Q. How do you become familiar with the weights? A. Oh, I don't know. I have been knocking around them for fifteen years and have seen them, and have handled them occasionally—of course it isn't my busi-
832 ness to handle them manually—we get an idea of the weight that way.

Q. What would be a fair average weight of the bananas taken in this whole April shipment?

Objected to, that no foundation has been laid for the question.

THE COURT: It may be he knows enough about the weight of bananas to give from his observation what would be the outside limit of their weight. I think it is competent for him

to testify to what he knows, but I think I must 833
sustain the objection as to the wholesale estimate.

Q. From what you saw of these bananas and from what you know of them what would be the outside limit of the bananas that were on this ship *Ceres* in April, taking now the largest bunches she had? A. I think 30 pounds all told would be as much as they would weigh.

By the Court: 834

Q. Was there any difference between these two consignments, in the average weight, from your observation? A. No, sir; I should think not from my recollection.

By Mr. Putnam:

Q. I think you have already testified as to the number of bunches, both the May shipment and April? A. Yes, sir.

Q. Will you just state, if you made any calculation 835
as to the number of pounds that would be taking them all through at 30 pounds, the largest weight? A. (Referring to a memorandum.) On the first voyage she had 13,395 bunches; taking them at 30 pounds each, or 75 to the ton—which is practically the same thing—that would make them 178½ tons. On voyage No. 9 she had in 18,248 bunches which, taken at the same weight, would be 243 tons.

By the Court:

Q. Wasn't there anything else in these cargoes ex- 836
cept bananas? A. Yes, sir; some small Central American products—coffee, ivory nuts and rubber.

By Mr. Putnam:

Q. Did you collect the freight on the other cargo? A. My firm did, yes.

Q. Was that by weight? A. That was by weight.

Q. And the weight given in the bills of lading? A. The weight given in the bills of lading, except in the case of the cocoanuts, which are given by

837 thousands; and the weight of the ivory nuts was estimated.

Q. Will you just state what the weight of the other merchandise was on the first trip, the April trip, according to the bills of lading?

Objected to, that the weight stated in the bills of lading do not make *prima facie* evidence against the ship.

The Court: I must hold that the bills of lading are *prima facie* evidence of what they state.

838

Q. State now the weight given by the bills of lading of the cargo by voyage No. 8.

Objected to that the bills of lading are the best evidence.

The Court: I can't allow the question if it is objected to, without the bills of lading being here. That is documentary evidence, however, that you can submit afterwards. You can take the testimony provisionally, if you wish, subject to the objection.

839

Mr. Kirlin: My objection is that the weights stated in the bills of lading does not make *prima facie* evidence against the ship.

A. The coffee on trip 8 weighed 197,849 pounds. There were 240 pounds of rubber. There was one crate of plants and four boxes of plants for which no weight was given, the weight was so trifling it wasn't put in the bills of lad-
840 ing. The total of that is 198,089 pounds, equal to 88½ tons. There were 40 tons of ivory nuts, making the total merchandise on that ship 128½ tons.

Q. Will you give me the merchandise on the No. 9 trip? A. There were 30 pounds of turtle shells, tortoise shells; 11,405 pounds of rubber; 2 pounds of gold dust; 8,085 pounds of hides; 11,626 pounds more of rubber; 1,321 pounds of skins; 130,672 pounds of coffee; 53,957 pounds of ivory nuts; making a total of 217,098 pounds, equal to 97 tons.

By Mr. Kirlin: 841

Q. Is that all the merchandise there was on that voyage? A. Yes, sir.

By Mr. Putnam:

Q. How do you get at the weight of the ivory nuts? A. The weight of the ivory nuts were furnished by the consignees who had them weighed on our dock.

Q. That was not stated in the bills of lading, was it? A. Yes, I believe the bills of lading read for so many tons, but the weight on that was inaccurate. 842

Q. And they were weighed before delivery? A. They were weighed before delivery on the dock.

Q. And freight was paid on that freight? A. Freight was paid on that weight.

Q. On the weight you have given? A. On the weight I have given.

By Mr. Kirlin:

Q. More or less, than the bills of lading? A. I don't remember. There were some cocoanuts besides this that I haven't mentioned as with the bananas, they belonged to the fruit, we class them with the fruit. 843

By the Court:

Q. On which voyage? A. On both voyages. On the first voyage there were 17,420 cocoanuts, on the second voyage there were 68 bags of cocoanuts, equal to 6800.

By Mr. Putnam: 844

Q. How was the weight of the cocoanuts ascertained? A. That I give by experience, they were not weighed.

Q. What estimate did you make of them? A. A very liberal estimate on that would be 10 tons on the first voyage, and say, 4 tons on the next voyage; that is more than they could possibly weigh.

Q. Can you now give the total weight on the first voyage of the cargo that came here—bananas, cocoanuts and general merchandise? A. I can.

845 Q. Just state that. A. (Referring to a memorandum.) 317 tons.

Q. Please also give the sum total for the May voyage? A. (Referring to a memorandum.) 344 tons. Both exclusive of coal.

Q. Look at this paper and see if you know how you received that and from whom? A. I received this from the agents of the owners of the *Ceres*.

Q. What firm, or who were they? A. E. J. R. Wigg & Co.

846 Q. Does that paper give the ordinary loading plan of the ship? A. Why, yes. That was sent us immediately after the charter was signed, for our use.

Q. It gives the displacement scale, does it not? A. It does.

Counsel for libellants offers the paper in evidence.

Objected to on the ground that it was furnished after the charter-party was signed; and that it does not appear that Wigg & Co. had
847 any authority whatever to make any representation as to the vessel's capacity or draft or anything of the kind; and that it does not appear that the paper came from the owners, that it may have been some old plan of the vessel before the class of the preceding year.

Objection overruled.

The paper is marked Exhibit 84.

By the Court:

848 Q. Do you know how much coal the *Ceres* had when she came in on either of those voyages? A. I have what she had when she arrived and when she left Aspinwall for New York.

Q. Did she get all her coal from New York? A. Yes, sir.

Q. State what she had when she left New York on the eighth voyage? A. I have it in the abstract of the log. (Referring to the document.) Either 432 or 422 tons.

By Mr. Putnam: 849

Q. Why is that "either"? A. I see the captain has marked as receiving in New York 390 tons while my pencil marking is 380; it probably indicates that the log is 10 tons wrong.

By the Court:

Q. When she arrived at the end of her eighth voyage do you know what coal she had? A. Yes; she had 80 tons when she got back here.

By Mr. Putnam: 850

Q. Can you also state what she had, according to the abstract of the log, at Colon? A. Yes, sir. When she left Colon for New York, according to the abstract, she had 235 tons of coal on board.

By the Court:

Q. And when she arrived at New York? A. There were 80 tons left.

Q. Now take the ninth voyage when she left New York? A. When she left New York she had 384 851 tons.

Q. And when she arrived in Colon? A. 252 tons when she arrived in Colon; but of course she would use some down there.

Q. And when she left Colon? A. She had in 218 tons.

Q. And when she arrived in New York? A. She still had 80 tons on board.

Q. When she arrived in Colon on the eighth voyage how much did she have? A. 287 tons. 852

By Mr. Putnam:

Q. Is it usual or not, to have a loading diagram of a vessel with a displacement scale in case of the charter of her for a time-charter? A. Always, if the charterers request it.

Q. It is necessary for the information of the charterer, is it, in loading her? A. Certainly.

Q. How soon after the charter-party was signed did you receive this Exhibit 84 from Wigg & Co.? A. I

853 can't say positively, but my recollection is that I wanted it before the charter was signed, while the negotiations were going on, and that Wigg told me that he then had this plan—or more than one of them—coming across in the mails, and that I got it almost immediately after the charter was signed.

Objected to.

Q. This charter-party was signed by cable authority as it says? A. The charter was signed by cable au-
854 thority.

Q. Who was employed by you to purchase these bananas out at Colon on these two voyages? A. On the first voyage Captain Swenson, on the second voyage my brother.

Q. Referring to the bills of lading, do you know whether or not the master brought his copies of the bill of lading with him? A. Oh, yes.

Q. Did you take them from him or did he retain them? A. He gave them to Williams, my freight
855 agent; Williams afterwards gave them to me.

Q. What became of the master's copies eventually? A. I have them in my office.

Q. You can produce them if necessary? A. I can, but there are a lot of them.

Q. Did you visit the steamer about the 18th of May, 1892, when she came back from the ninth voyage? A. Yes, sir.

Q. What condition did you find her to be in then? A. I found her on the drydock.

856 Q. Did you find her in good order? A. No. The plate in the side was partly cut out and the wheel was partly off. I didn't go on the deck of the vessel at all, stayed on the floor of the drydock and walked around with the captain.

Q. Did you give any instructions to Holmquist, the mate of the *Ceres*, about rejecting bananas on either of these voyages? A. No; I had last seen Holmquist prior to those voyages in Honduras in the preceding November; I gave him no instructions whatever concerning these trips.

By the Court: 857

Q. On the voyages out from New York did this steamer carry cargo? A. I can give it to you exactly if you wish. (Referring to a memorandum.) On voyage Number 8 from New York to Colon, she had 390 tons of coal and about 300 barrels of general cargo.

Q. Do you know what it weighed? A. The barrels would run from 200 to 300 pounds each—the flour about 224 and pork about 300.

Q. That is all she had on the first voyage? A. That is all on voyage No. 8. 858

Q. On the ninth voyage? A. She had 188 barrels of general cargo.

By Mr. Putnam:

Q. About the same weight? A. About the same weight per barrel. Both those trips she was practically in ballast, except the bunker coal.

By the Court:

Q. And no other cargo? A. And no other cargo; practically in ballast, except the bunker coal. 959

By Mr. Putnam:

Q. In this charter party it provides two and one-half per cent. address commission payable to the charterers; did you receive that out of the hire in each payment you made? A. We did; we deducted that and two and one-half per cent. more for the broker, which we paid him.

Q. That went to the broker and not to yourself? A. We paid that over to the broker. We paid the ship 860 650 pounds less five per cent; two and one-half we retained and two and one-half gave the broker. They afterwards got the brokers to reduce their demands to half that, so we only retained two and one-half for the broker and two and one-half for ourselves.

Cross-Examined by Counsel for Claimants:

By Mr. Kirlin:

Q. Did you retain two and one-half for the months

861 succeeding the rejection of the steamer? A. I couldn't collect, we didn't have any hire to pay for that month.

Q. Did you pay Williams? A. We did after we got it from the owners; if we got nothing from the owners we didn't pay Williams.

Q. Williams has been paid for the month succeeding the rejection of the steamer? A. No, I think he sued you for it or the steamer.

Q. Do you know whether he has been paid? A. I think I heard the case had been compromised.

862 Counsel for claimants offers in evidence from Drexel, Morgan & Co. to G. Wessels & Co., dated February 9, 1892.

It is marked Exhibit 54.

Q. Is this letter I show you signed by you? A. Yes, that is my personal signature.

The letter from Wessels to Svensson, dated January 9, 1892, is offered in evidence.

It is marked Exhibit 32.

863

Q. I show you a letter dated February 5, 1892. Is that your signature? A. Yes, that is mine.

The letter is offered in evidence and marked Exhibit 53. (A copy of the same letter has been heretofore marked Exhibit 53.)

Q. You took no weights of the cargo yourself in New York? A. Personally? No.

Q. And your testimony about weights is entirely
864 founded on statements contained in the bills of lading and the report made to you by the weighing officer of the Pennsylvania Railroad, is it? A. Certainly. I didn't weigh a package of the goods myself.

Q. You don't contend that this weight you have given here is any more than an approximation? A. Why, that is all. It is my best approximation, though.

Q. The weight on the eighth and ninth voyages? A. Do you mean the weight of the bananas?

Q. No, the weight of the entire cargo? A. O dear, no.

I regard the weight of the merchandise, of the coffee, as strictly accurate. 865

Q. The freight wasn't paid by weight? A. It was; the freight was a cent a pound; we are not likely to be careless; it was too large freight to be careless on.

Q. Of course, in purchasing cargo down there the captain acted as your agent and not agent of the ship? A. Acted as agent for my firm, of course.

Q. And whatever he did regarding the selection of a certain grade of cargo was your act?

Objected to as a question of law. 866

A. I am not a lawyer, you know, Mr. Kirlin.

Q. Do you remember in April the captain making any request to go into drydock to effect some repairs before he started to go on the second voyage? A. No, sir.

Q. It didn't come to your knowledge at all. A. No, sir.

Q. Don't you remember that it was said it was desirable to get that other cargo up soon and you couldn't spare the time for docking the vessel at that time? A. Certainly not. The eighth voyage commenced on the 26th of March. 867

Q. Don't you remember the captain writing you from Pensacola that he wanted to go into drydock on account of a collision he had at Greytown? A. Yes. No, I don't remember about the drydock part; possibly it may be so. He wrote that he had obtained permission to repair and was going to run with those repairs until he came to New York. 868

Q. Don't you remember when he came to New York he wanted to go into drydock? A. Not that I know of. The plate made no necessity for going into the dock; it would have held for a year or two years.

Q. Do you know of any fruit vessel that has limited bunkers like the *Ceres*, which has to carry coals on deck, that is able to carry cargoes of bananas without using water ballast? A. I don't understand what you mean by carrying coal on deck.

869 Q. You know the charter says the bunker capacity of the *Ceres* is 100 tons? A. Yes.

Q. And all you carry above that has to go on deck? A. All you carry above that? Not necessarily. Do you mean above in quantity or in altitude?

Q. In quantity? A. Not at all.

Q. Where would he put it? A. Where we did on the *Ceres*—put some in the alleyways and put some down in the hold of No. 3.

Q. On what voyage did you have coal in No. 3? A.
870 I know of one personally that I can name; I recollect at least three or four more.

Q. Do you approve of carrying coal in the hold where you are going to carry fruit? A. Why, certainly; it don't do any harm provided you don't carry it there when you have got the fruit there.

Q. Wasn't it true on that occasion, when some coal was put in No. 3, there wasn't room to carry it in the usual place about deck? A. Why, no, not at all; it was put there simply for convenience.

871 Q. On that voyage didn't she have more coal than she ever carried at any other time? A. No.

Q. What other voyage did she have as much as that? A. At least two that I remember.

Q. Two out of nine? A. Two that I remember. You must remember that I only saw the *Ceres* sail four times in all.

Q. You knew they carried coal on deck, the surplus coal? A. Why no; they didn't carry it on deck.

Q. Well, in the alley ways; I mean above the
872 holds? A. They never carried it above the holds.

Q. Where did they carry it on the times they didn't carry it in the holds, to your knowledge? A. In the bunkers and in the alley way, which is an extension of the between-decks.

Q. You don't carry fruit in the between-decks, do you? A. Why, yes.

Q. It is partitioned off, is it not? A. Temporarily sometimes, other times not; there is no permanent partition.

RE-DIRECT BY by Counsel for Libellants: 873

By Mr. Putnam:

C. You were asked on Wednesday about a telegram that you sent to the captain from Trenton, New Jersey, about 2 o'clock in the morning, about some settlement of the hire. Do you want to make any corrections in your answer? A. Yes; I do.

Q. Please state whatever correction you wish to make. A. I testified that the amount of money I got I thought included the compromise of the rest of the 874
charter beyond the half month then due. I have been thinking it over since then, and while I haven't had time to look it up I am not sure whether I did not get the compromise money later on and whether that money I got that night was from the half month ending the 23d.

Q. That is the money you got from the sub-charter? A. The money I got that night; yes.

By Mr. Kirlin: 875

Q. By reference to the letter which you saw there (Exhibit 53) was it not the fact that the hire was paid up to the 24th? A. It may be. I didn't see any dates in that letter, in fact I didn't see that part of it at all.

HENRY E. WESSELS, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. Putnam: 876

Q. You are not one of the firm of G. Wessels & Co.? A. No, sir.

Q. You are a brother of the last witness? A. I am.

Q. You have been familiar with the weighing of bananas and the handling of them for many years? A. For about fourteen years.

Q. You went down on voyage No. 9 of the *Ceres* and came back on her on that voyage? A. I did.

877 Q. You had to do with the selection of the cargo at Colon? A. Yes, sir.

Q. From what place did the cargo come to the ship? A. From points along the Panama Railroad; came alongside of the ship in railroad cars.

Q. Was there any of it that was rejected by you as not fit and sent back? A. Yes, sir.

Q. After you rejected any did you allow afterwards, to your knowledge, any of it to come again to the ship? A. No, sir.

878 Q. Did you give any directions to the mate to take any on board that had been rejected? A. My orders were very stringent to the contrary.

Q. What kind of weather was the voyage out and back? A. Very pleasant.

Q. What was the condition of the fruit as received on board on the ninth voyage? A. Green, in good order.

Q. What was the condition of the fruit on the ninth voyage when it got here? A. Poor order.

879 Q. Did you see it when it was delivered? A. Yes, sir; I did the delivering of it.

Q. Are you familiar with the weights of bananas, not only from the handling but from the arrangement with the railroads for freights? A. Yes, sir.

Q. How do you get the weights from the railroad? A. From the railroad, who have men to weigh the bunches.

Q. How does it come to you to take notice of the weight? A. We have—the freight is payable on ship-
880 ment of the goods, but where they have confidence in the shipper they take his personal guarantee for each shipment instead of a payment.

Q. Is that in writing? A. That is in writing; writing or rubber stamp for convenience.

Q. Do you observe the weights when you guarantee these freights? A. Yes, sir.

Q. What would be an outside estimate for the weight of all these bananas on the No. 9 voyage? A. On No. 9 I should say they wouldn't weigh over 30 pounds at the extreme.

Q. Do you remember when the fruit was ordered for 881
the No. 9 voyage down there, what day? A. It was ordered on the day that we arrived in Aspinwall.

Q. And when was the fruit put on board, how long after? A. It was on Sunday evening that the arrangements were made and was put on board, commencing with Friday morning following.

Q. What day was the fruit ordered? A. The fruit was ordered for Thursday morning early.

Q. And you got the steamer there what day? A. Got there very late Thursday evening. 882

Q. Not early enough to begin any work? A. Couldn't get to the dock, it was too dark.

Q. Friday you began loading? A. Friday four o'clock in the morning we went to the dock.

Q. How did you come to order the fruit for a day ahead? Or how did you come to order the fruit to be cut and ready on Thursday? A. The ship was to make a trip from Aspinwall to Greytown, Nicaragua, and then return to Aspinwall and load this cargo that was ordered. 883

Q. Was there any detention on the voyage? A. No, sir

Q. Just her going? A. Take cargo to Greytown, load cargo there and come back to Aspinwall.

Q. Why did they not get back at the time fixed? A. Didn't arrive there.

Q. Why was that? A. I suppose the ship didn't travel fast enough.

Q. There was no bad weather, was there? A. No, sir. 884

Q. Fine weather? A. Good weather.

Q. Was Thursday morning fixed after consultation with the captain? A. The captain was present when the arrangement was made, he was consulted when the arrangement was made.

Q. What is the effect of a day's delay on bananas that are cut that way ready for shipping? A. It makes the time at which they are ripe that much closer.

885 Cross-Examined by Counsel for Claimants:

By Mr. Kirlin:

Q. Were you present during the entire loading of the cargo at Colon? A. Yes, sir.

Q. Where were you? A. On deck.

Q. Whereabouts? A. At the hatches.

Q. Which hatch? A. After hatch and hatch No. 3.

Q. The two after hatches? A. No, sir, I wouldn't call it the after hatch, I call it No. 3 hatch forward.

886 Q. No. 3 and 4? A. No. 4 is the after hatch; there is only one after hatch on that ship, No. 3 is way ahead of it in the front end of the ship.

Q. It is next to it? A. Yes.

Q. Next in number? A. Next in number, but there is a big distance between the two.

Q. Who was receiving the fruit at No. 1 and 2? A. No. 1 and 2 were not loading at the same time.

Q. Did you hear Mr. Mowbray's testimony to-day? A. Yes, sir.

887 Q. He said they were loading four hatches. A. Fruit went into the four hatches, but not with four gangs of men at the same time.

Q. What kind of weather was it when you were loading? A. It was raining, that is, raining off and on.

Q. Did you come up with the ship on that voyage to New York? A. Yes, sir.

888 George T. Hilton, recalled for libellants, testifies:

By Mr. Putnam:

Q. You loaded the coal on this eighth voyage in March? A. Yes, sir.

Q. State where you put it? A. I filled the ship's bunker capacity which was as near as I can recollect about 100 tons.

Q. Where was the balance? A. The balance was in her alley-ways and across the after end of her upper between-decks.

Q. Do you remember whether you put any down in 889
the tank? A. I wouldn't be positive sure on that particular trip, but I know I used to do it; somewhere from fifteen to twenty tons.

Q. Whose directions did you take in placing in respect to loading the coal and what place you were to put it? A. Almost invariably the mate.

Q. On the ninth voyage do you remember how you loaded the coal then? A. I wouldn't state positive whether I put any in that bottom, which was her ballast-tank, on the particular voyage. 890

Q. Did you put some more than in the bunker and was that in the alley-way the same? A. Oh, it was stowed the same on every trip with the exception if the ship had quite a little outward cargo then we didn't need to put any down in the bottom; if she didn't have outward cargo she was top-heavy.

Q. You don't recollect on this ninth voyage whether you put any in the tank or not?

By the Court: 891

Q. If she was top-heavy did coal go down into the tank to balance it? A. Yes, sir, if we had no outward cargo.

Q. You said she was top-heavy when she didn't have outward cargo? A. She was top-heavy when she didn't have much outward cargo.

Q. In those cases did you put coal in the tanks? A. In those cases we always put coal in the tank.

By Mr. Putnam: 892

Q. You saw these bananas that came up here and you are familiar with handling them and the weights of bananas, are you not? A. Yes, sir, I should be, I have been at it now fifteen years.

Q. In your judgment what would be a fair average weight of the bunches in the state such as they came out on voyages eight and nine? A. Just about 30 pounds to the bunch.

Q. It wouldn't exceed that? A. It might a little, but I don't think much.

893 Cross-Examined by Counsel for Claimants:

By Mr. Kirlin:

Q. Wasn't the coal that you say was put in between decks put on the same deck as that you say was in the alley-ways? A. Yes, it is one and the same deck.

Q. That is the main deck? A. Yes, sir.

Q. Why do you call that the between decks? A. It is the upper between-decks.

Q. Isn't it more correct to call that the main-deck? A. It is the main deck of the ship.

894 Q. There wasn't any coal below that deck? A. Yes, sir, there was.

Q. Except what you put in the tank and in the bunker? A. Certainly not, because there was nowhere else to put it without you put it in the cargo hold capacity.

Libellants Rest.

Mr.. Kirlin offers in evidence a translation of the log; it is marked Exhibit 71.

895

Olaf J. Svensson, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. Kirlin:

Q. You have been examined before in this case? A. Yes, sir.

Q. What is the draft of the steamer *Ceres* with no cargo, the mean draft? A. The *Ceres*' mean draft,

896 but water ballast enough and coal enough to take her for say 5 days is about 11½; mean draft.

Q. How many tons of coal would that include? A. That would be about 70 to 80 tons.

Q. How much water ballast? A. That would be 200 tons about, with 80 tons of coal; of water ballast we usually have 2 tanks full; but no fresh water.

Q. That would bring the ship to a mean draft of 11½? A. About 11½.

Q. What is the extreme loadwater line of the *Ceres*? A. 15.9 mean.

Q. What trade had she been engaged in before she 897
was chartered by Wessels? A. In the cattle trade between Sweden and England.

Q. What kind of coals did she carry? A. She had Northumberland—North Country bituminous coal.

Q. What draft did she have for the cargo which she carried between Sweden and England? A. Going home when she was deep loaded with coals to Sweden —going to England with cattle she was drawing about 14 mean.

Q. Did that include water ballast? A. Yes, sir; 898
200 tons, and sometimes more; we have a third tank which holds about 48 tons, that was generally full too with a heavy top cargo.

Q. Was the cargo which the vessel carried from Sweden to England, namely, cattle with a draft of 14 feet, light cargo or not? A. It was considered light cargo.

Q. You considered the vessel light laden? A. Yes, sir; besides cattle she had butter and general farm produce. 899

Q. What speed did she make from Sweden to England laden as you have described with mean draft 14?

Objected to. Excluded.

Q. When did the question of speed first come up between you and Wessels? A. Well, I think they said something about it the first voyage I ever arrived here in New York from Livingston, Guatemala.

Q. Were you in command of the *Ceres* during all of the voyages under the Wessels charter? A. Yes, sir. 900

Q. Was anything said at the end of the second voyage? A. Yes, sir; they said very near every voyage —they complained to me about it.

Q. Through what members of the firm? A. Especially with the old man Wessels every time I came up there.

Q. Through Mr. Gerhard Wessels? A. Mr. Gerhard Wessels, the charter party, said that I should have a certain amount of money for the food money, for grub, which they had on the voyage—food for every-

901 one, as I had always bills to settle with old man Wessels, and when I came up to settle them there was always some question about the speed of the vessel.

Q. During those conversations was anything said about the speed the vessel had made before she entered into this charter party? A. Yes, sir; they knew that before.

Q. Did he at any time say to you that he was acquainted with what the vessel had done on former voyages?

902 Objected to. Allowed.

THE COURT: Q. What, if anything, did he say on that subject? A. He said that he knew by the report from the charterers that the vessel had frequently made 12 knots and even more and why couldn't she do that now.

MR. KIRLIN: From whom did he say he had learned that? A. From Rudgard Wigg in the first hand.

Q. Who was he? A. He was the man—the chart-
903 erer out here.

Q. Who negotiated the charter? A. Yes, sir.

Q. Did Mr. Wessels indicate to you in any way as to what voyages he understood the ship had made that speed on? A. No, sir.

Q. Or what trade she had been engaged in when she made it? A. Yes, sir; he asked me in what trade and of course I explained to him then.

Q. What trade she had been in? A. Yes, sir.

Q. In reference to speed? A. Yes, sir; over at the
904 North Sea.

Q. Tell us what you told him? A. I told him that she had frequently done even more than 12 knots, meaning there in our trade, 600 miles between Newcastle and Malmoe, and she had covered that more than once in 48 hours. I told him about the conditions and the coal and everything.

Q. Were those the same conditions that you described to him here? A. Yes, sir; the same conditions.

Q. What draft did you tell him you had been draw-

ing when you made 12 knots and what cargo you had on board? A. I told him we were drawing about 14, but not so much by the stern as out here, on account of all the coals we had to carry on account of running the vessel the long distances. 905

Q. Did you tell him what cargo you had? A. I told him what cargo we had; yes, sir.

THE COURT: Q. What did you tell him? A. I told him about as much as I knew about our performances. I told him what speed we had made and what draft she had. 906

MR. KIRLIN: Q. Give us the words. A. It is a long time ago and exactly the run of the words I cannot remember. The *Ceres* has been in the cattle trade running between Malmoe and England before, as you know by report from Wigg, as I heard from him, and she has frequently made 12 knots and even over, sometimes, running in that trade, but she was drawing about 14 mean and she was better trimmed too on account of my not having so many coals to carry as we have from you, and that is the reason we could trim the vessel better, I suppose. 907

THE COURT: Q. You mean better trimmed with cattle? A. Yes, sir; in our trade at home she was better trimmed between Malmoe and England and then I said the coals we had to use was better, because yours is bad, very small, and so they were, and those coals we got in England were large and the boilers were built for them.

MR. KIRLIN: Q. Did you have the same boilers then as now? A. Yes, sir. 908

Q. Did the furnace have a patch on then that it has now? A. Yes, sir; we put that patch on the second year of her running in the old trade.

Q. Was there any difference between the condition of the machinery then and while she was under the Wessels charter in any particular? A. No, sir.

THE COURT:

Q. What year's run was this that you began on this charter? A. 1891.

909 Q. In what year of the vessel's running was this charter that is now in question? A. She was eight years old when her charter was made.

Q. Was that the 8th year of her running? A. Well, she had been running all those years.

Q. Then that patch had been on six years before this charter? A. Yes, sir, about six years before; but not so large to start with.

MR. KIRLIN:

Q. Did you have any conversation with Messrs.
910 Wessels early in this charter about a claim that she had not fulfilled in the guaranty? A. They never spoke of fulfilling the guaranty; they never spoke to me about making claims neither—not to me.

Q. Never? A. Not to me.

Q. Didn't you have a conversation at one time when you became vexed with Mr. Wessels about complaints that were made? A. Yes, sir; I had.

Q. What did you offer to do when Wessels appeared dissatisfied with the vessel? A. Of course I offered
911 to do my best, but I said it looks very bad, because I had tried my best already, but I say with the coals which I get we cannot possibly keep the steam up as we should.

Q. What did you say about the charter—about giving up the charter? A. I said, you have many boats running and I suppose can get another boat if this boat is not good enough, and I will try and get another charter. He said he didn't like to throw up the vessel where it commenced to be used by the trade, and we
912 knew the people in Honduras.

Q. What voyage was that that you told him he had better get another vessel and you another charter? A. I can't remember, but it was during the first of the voyages; I can't exactly remember what voyage it was, but it was while Mr. Wigg was here, because I spoke to him first about it.

Q. Wasn't it within the first half dozen voyages? A. Yes, sir; it was.

Q. Do you remember whether it was before the charter was extended—whether it was within the first

four months of the charter? A. Yes, sir, it was be- 913
fore the charter was extended.

Q. Now, come down to voyage No. 8; who arranged for the purchase of the fruit in Colon, the first voyage from Colon? A. I arranged for the purchase of the fruit at that time.

Q. How did that come about? A. When I was in New York before I went down there, old Mr. Wessels asked me if I would do it, as none of them were able to go down with me.

Q. Did they give you the money? A. No, sir; no 914
money for it.

Q. How did you buy it? A. By making a check out in my name for the amount of the fruit.

Q. Against whom? A. Against Wessels & Co., of course.

Q. You gave a draft? A. Yes, sir, I did; I was asked to do it and I did it.

Q. Had they any agent at Colon? A. No, sir; not more than that man which brought the fruit down there; but I don't think they knew him before—they 915
might know him some but not much.

Q. Were you directed from whom to purchase the fruit? A. Yes, sir; I was.

Q. Who was it? A. Well, I don't remember his name; he was of Jewish descent, but I don't remember his name now, I have lost the letters.

Q. Were both cargoes bought from the same person? A. Yes, sir; but the second cargo Mr. Henry Wessels was down there and attended to it.

Q. Where was the ship lying when the fruit came 916
down on the 8th voyage? A. About a mile and a half up in the Panama Canal.

Q. How did the bananas come to the ship? A. In small dories and lighters.

Q. Where was the fruit when you went up in the Canal? A. Lying on the ground, on a point of land.

Q. What was the condition of the weather? A. It was variable, like that time of year; it varies, raining and sunshine.

917 Q. Was the fruit under any shed or cover when you came into the Canal? A. No, sir.

Q. How was it covered? A. Parts of it there was a few palm leaves thrown over and part of it nothing at all on it.

Q. Did that protect it from the elements? A. No, sir.

Q. When it came aboard, what was its conditions? A. All over-ripe. Certain times of year you have to bring different kinds of fruit, you know.

918 Q. What do you mean by the expression over-ripe? A. Well, you see we call it down there full and half full and three-quarters full, you know. That is how the bananas are in the summer time; we have to have them only half full, and I asked them to cut the fruit between half and three-quarters; instead of that they cut the fruit when it was between three-quarters and full, and some was already turning yellow.

Q. In what condition should fruit be for shipment for a voyage of that length? A. Well, it should be
919 green, already green and between half and two-thirds full, but when I came down there, that voyage I got a letter from the Messrs. Wessels telling me that there had been such difficulty to get fruit for the *America* and *Gurley* charter that time, and telling me I should not be too hard against the fruit growers that time as they intended to send the other steamers down there, and on account of that letter I couldn't refuse that cargo.

MR. PUTNAM: I call for that letter.

920 THE WITNESS: I haven't got that letter, because they asked me in the letter to tear it to pieces, to destroy it—not to show it to the agent down there—to this man of whom I got the fruit, and I was foolish enough to act according to their instructions.

The Court:

Q. Who was the letter from? A. From the firm of Wessels & Co.

Mr. Kirlin: 921

Q. Was there a supercargo on board then? A. Yes, Mr. Mowbray was on board then.

Q. Did he object to the receipt of the fruit? A. No, sir; he didn't make any objection.

Q. After you got that cargo aboard what was the draft of the vessel? A. It is not exactly in my memory now, but you can see in the log book there.

Q. Is the record in the log book correct? A. Yes, sir; that is right.

Q. Just refer to the log book and see what it was 922
on the first voyage from Colon. A. She was drawing 13.6 forward and 16.6 aft.

Q. That would have made her mean draft? A. 15 feet.

The Court:

Q. Do you know how much difference in draft a hundred tons makes at that draft? A. About, for the *Ceres*, 9 to 10 inches, I think; something like that.

Mr. Kirlin: 923

Q. How long have you been going to sea in steamships? A. Only been since I was 21 years of age; that is about 15 years.

Q. How long have you been in the *Ceres?* A. Since she was built.

Q. When was that? A. 1883.

Q. In your judgment would a hundred tons make a difference between the *Ceres* being deep loaded and light loaded? A. Of course not.

Q. Suppose the *Ceres* draws 15 feet 9 deep laden, 924
what should her draft be light laden? A. The inside about 14 feet light laden.

Q. What do you say would be a fair way of estimating the light laden draft of a steamer; suppose she draws 11 feet 5 empty and 15.9 deep laden; how would you say you ought to determine her draft light laden; what proportion of her deep draft? A. The proportion, according to my best belief, would be between her ballast draft and her full laden draft.

925 Q. What would be the outside limit? A. It would be about two-thirds.

Q. From half to two-thirds? A. Yes.

Q. Did you have any cargo on that voyage besides fruit? A. Yes.

Q. What? A. She had coffee, hides, ivory, nuts and some small other things.

Q. Had you any water ballast when you left Colon on the 8th voyage? A. Yes, sir; about 200 tons; the two forward tanks full.

926 Q. Why did you carry a water ballast? A. Well, I had to carry it; if I didn't the vessel would capsize with the cargo placed one-third on the main deck and with the coals; that was more than two-thirds.

Q. What cargo was on the main deck? A. Bananas.

Q. Throughout? A. Throughout, and coals.

Q. Were the coals also on that deck? A. Yes, sir.

The Court:

927 Q. Do you mean there were no bananas in the hold? A. Yes, sir; there was, but about one-third of the bananas were up on top of the deck.

Q. The rest in the holds? A. Yes, sir.

Q. Where was the coal, except what was in the bunkers? A. They were on the main deck in alleyways.

Q. Did you have any more water ballast than was required for the safe navigation of the vessel? A. No, sir.

928 Mr. Kirlin:

Q. Did the matter of your carrying water ballast refer to any conversation between you and the Messrs. Wessels previous to that? A. Yes, sir; several times the Wessels complained about the heavy draft on account of the ballast, and I said I couldn't help going out I have so much coals on the main deck, and it was your orders to carry it there, and about one-third of the cargo was on the main deck, so I have to carry two tanks full of water.

Q. Did you have any water ballast aft? A. Not

going home; I always had the after tank empty then, 929
but going out, on account of the big quantity of coals on the upper deck, I had all three tanks full.

Q. How much then? A. 250 tons, about.

Q. Did you make the entries in the scrap log in relation to the weather which have been transcribed into the log in evidence? A. Yes, sir.

Q. From day to day? A. Every four hours.

Q. Were they correct? A. Yes, sir.

Q. Did they give a true account of the weather as it was on each watch? A. Yes, sir. 930

Q. Will you refer to the log for the first voyage from Colon to New York and give a list of the days when you consider that the weather was not moderate and the days when it was moderate on the eighth voyage? A. From April 15th, commencing at midnight, good weather—little before midnight; April 17th, and then four hours in April 16th.

Q. The last four hours in April 16th? A. Yes, sir; the last four hours in April 16th and the whole of April 17th; there was about two hours moderate on 931
April 18, counting from midnight, from 12 to 2 A. M. about; on April 18th again from 8 to 12 P. M. moderate; and then from the end of the voyage to April 19th, the whole of April 19th—I am wrong there, I must correct that; it didn't commence to moderate before 4 o'clock in the morning of April 18th and the rest of that day.

The Court:

Q. What time did she arrive in New York on the 932
eighth voyage? A. She arrived the 20th of April in New York; we were in Staten Island the whole of that night and arrived at 11.45 P. M. of the 19th.

Mr. Kirlin:

Q. It was not moderate from 8 to 12 of the 18th? A. No, sir; it wasn't.

Q. Now state the time that you consider not moderate weather? A. The whole of the 11th; we left there

933 at 1.30 P. M. and the whole of that day it wasn't moderate.

Q. From 1:30 P. M., till midnight? A. Yes, sir, and then the 12th of April, from midnight the whole day wasn't moderate; the 13th wasn't moderate up to eight o'clock P. M., and then it commenced to get moderate; from 8 to 12 it commenced to get moderate.

Q. Then it was moderate from 8 P. M., up till when? A. Up to about 4 A. M., April 14th; the 14th it wasn't moderate after 4 A. M., but till about 8 or 9
934 P. M., it commenced to get moderate then; April 16th wasn't moderate from midnight to about 8 P. M. the same day.

The Court:

Q. Then it was moderate from 8 P. M.? A. To about 2 o'clock on the 18th of April.

Mr. Kirlin:

Q. How long on the 16th did it continue to be moderate after 6 o'clock? A. The whole day of the
935 17th, and then April 18th, it was moderate only about two hours; the first two hours from 2 A. M.; from 2 A. M., it wasn't moderate up till midnight, and then it wasn't moderate for about four hours on April 19th.

Q. On the second voyage from Colon, where did you load the cargo? A. I loaded it alongside the wharf in Colon.

Q. Who bought that cargo? A. Mr. Henry Wessels.

Q. What was the condition of the weather? A. Very variable, sunshine and rain, just like it was
936 before, raining very heavy in the afternoon and night.

Q. What was the condition of the fruit on that voyage on the ship? A. Just about the same as the voyage before, half full and commence to ripen, some yellow.

Q. Had you any other cargo? A. Yes, sir.

Q. What? A. The same as the voyage before, coffee and hides, and different other things.

Q. What was the draft of the vessel on leaving Colon, on that voyage? A. 15.9 mean.

Q. Extreme deep draft? A. Yes.

Q. Did that include water ballast? A. Yes, sir, the 937
same amount of water ballast as the time before.

Q. Give the draft aft and forward. A. 14.6 forward and 17 aft; mean, 15.9.

Q. Did that include any water ballast? A. Yes, sir.

Q. Where? A. In the two forward tanks.

Q. How did you come to carry that ballast on that vogage? A. She was too deep over; she would capsize without it.

Q. Did you have any cargo on the main deck? A. 938
Yes, sir, full of bananas.

Q. Any coal on that main deck? A. Yes, sir.

Q. Was any more ballast carried than was necessary for safe navigation? A. No, sir.

Q. Was Mr. Wessels aboard on that voyage? A. Yes, sir.

Q. Do you know whether he was aware that you carried water ballast? A. He must be, according to the conversations we always had about it.

Q. Did you have any conversation with him tending 939
to fix the knowledge on his part that you carried water ballast? A. Yes, sir.

Q. When? A. Different times, I can't exactly state when, but as they were aboard several voyages, and complained of the deep draft of the vessel generally, always, I had said that we carried this water ballast, and she was very down sometimes even with the water ballast, and then I had explained that we had filled another tank, the after tank.

Q. Refer to the log, and state what the weather 940
was, what days were moderate, and what days the weather was immoderate on this voyage in your judgment? A. Seventh of May, 7:45 P. M., from 7 until 12 it was moderate, and on the 8th of May, from midnight, the whole of that day up till the next midnight it was moderate; and the 9th from midnight it was moderate up to noon, a little before noon of the 10th, it commenced to get stormy; on the 11th it commenced to get moderate about 7 o'clock A. M., and it was moderate the rest of that day; the 12th it was moderate the

941 whole of the day; it was moderate the whole of the 13th; the 14th moderate.

The Court:

Q. When did you arrive? A. The 16th. The 15th and the whole of the rest of the voyage it was moderate; we arrived on the 16th, at 10:30 A. M., anchored at Quarantine.

Q. Now, give us the bad weather. A. Not moderate from midday on the 10th up to 6 or 7 o'clock
942 A. M., on the 11th.

Mr. Kirlin:

Q. Refer to the scrap log for the date, the 19th of April, and let us see if there was any correction for the distance from Barnegat to Scotland Lightship, which Captain Crossman referred to Friday for the eighth voyage. A. I see the figures are altered here from nothing to one.

Q. What was the original entry? A. 2106.

Q. What was the record of the log as it passed
943 Barnegat? A. It was 2060, at 5:45 P. M.

Q. And 9:40? A. Passed Scotland Lightship.

Q. What was the entry there as made originally in the scrap book? A. 2106.

Q. What time did you pass Scotland Lightship? A. 9:40 P. M.

Q. Which one of those entries is correct, and scrap log, or the official log? A. The scrap log is my writing and must be correct.

944 Mr. Putnam:

Q. What day was it that you passed Scotland Lightship at 9:40 A. M.? A. Tuesday, the 19th of April.

Q. That was at Quarantine, was it? A. Yes, sir, at 11:45 P. M.

Q. You passed Scotland Lightship at 9:40, and there footed up the number of miles for the voyage? A. Yes, sir.

Q. How many miles did you log in your book between noon of the 19th, the time passing Scotland

Lightship, which you say was 9:40 P. M.? A. Cor- 945
rected I say 96 miles.

Q. In your official report you entered 108 miles for that day; just look and see if you didn't report to us 108. A. Yes, that is right, but I took it out after the log in evidence; I put it in this scrap log, but the mate has been writing his own log ashore, or put it in afterwards.

Mr. Kirlin: Q. That includes the error? A. Yes, sir.

Mr. Putnam: Q. Can you tell when it was that the 946
figures 2,116 in your official log were changed or any alteration made in them? A. I don't remember.

Examination of Captain Svensson suspended.

Thomas Congdon, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. Kirlin:

Q. You are Lloyd's surveyor in this port? A. Yes, 947
sir.

Q. Have you had occasion to survey vessels with regard to their draft from time to time in your business? A. Yes; some times.

Q. Assume that a vessel draws 11.6 in ballast and that her deep draft is 15.9; what would you say her draft should be light laden, as the outside limit? A. I should say the point midway between the two.

Q. What point would that be? A. About 13.7½ 948
for the *Ceres*.

Q. Have you surveyed the *Ceres*? A. I have.

Q. Can you state whether 15.9 is her extreme draft? A. That is so recorded.

Q. Would you regard, then, any cargo deeper than say 13.7 or 10 or even 14 feet as a light laden cargo? A. No; in my judgment it would exceed the light load draft.

Q. And it would be approaching her heavy cargo? A. It would be approaching the deeper load line.

949 Q. Do you remember that the vessel was in the dock in May, 1892? A. Yes.

Q. Do you remember that they wanted to go in the dock before that on account of some damage to the side plates? A. Yes; I first surveyed her in March, 1892, owing to a damaged plate.

Q. Did you recommend docking? A. I did recommend docking, and then the captain desired that the ship might be allowed to proceed, as I understood from the captain that the charterers did not want to
950 detain the vessel; I had to get a reason why the work was dispensed with, and that is the reason the captain gave to me; and I allowed her to return, because the captain wished to proceed on another voyage before taking out the damaged plate.

Q. What ground of urgency was given? A. The reason given was that the charterers did not want to interrupt the trade of the vessel; or something to that effect.

951 Cross-Examined by Mr. Putnam:

Q. What was the plate that had to be taken out, or it was desired to remove? A. Off on the port side, and part of it was below or nearly below the water line.

Q. It was a plate where there had been a collision? A. Yes, sir; some lighter struck the vessel.

Q. Nothing to do to the boilers or machinery? A. Nothing whatever.

Q. And you allowed the vessel to go until afterwards replaced? A. Yes, sir.

952 Q. Do you know whether the British Lloyd's register is a voluntary association, or is a government association? A. Purely voluntary.

Q. They have representatives in different ports? A. Yes.

Q. You are the representative in New York? A. In New York, yes, sir.

Q. Besides that there is a line regulation in England for British vessels, only? A. For all that choose to comply with it.

Q. Is there a difference between the load line for

winter and summer? A. Yes, in the North Atlantic trade. 953

Q. Can you tell us what is the difference between the load line in the North Atlantic trade in winter and summer time? A. It depends upon the vessel.

Q. Take a vessel of the *Ceres*' size; what would be the difference in the load line in the North Atlantic in winter and summer?

Objected to that the vessel is not in the North Atlantic trade.

954

A. About 3 inches.

Q. When you speak of 15.9 do you intend that to be winter draft or summer draft?

Objected to.

A. 15.9, that is the summer draft of the vessel, and the North Atlantic draft would be about 3 inches less.

Q. Have you ever made any calculations to get at that draft, 15.9, or is it simply from books? A. Simply from books. 955

Q. You don't know who surveyed her or how it was ascertained? A. No; but I know it is correct.

Q. Have you ever been applied to to ascertain the meaning of the term "light laden"? A. No, sir.

Q. Of course you understand that she had cargo on board with "light laden"? A. Yes, sir; about 50% of her dead weight.

Q. And she would have water ballast? A. Yes, sir; I allowed for that.

Q. And coal for fuel? A. Yes, sir. 956

Q. And about 50% cargo too? A. Yes, sir; in addition to that; 50% of the dead weight, I should say.

By the Court:

Q. Dead weight of the cargo? A. Yes, sir.

Q. By that do you mean to exclude coals? A. No sir; I include coal.

Q. Would it be light laden if she should carry no cargo at all? A. It would.

957 Q. Oh, true; no, I said about 50% of her carrying capacity.

Q. Of cargo? A. Well, it depends upon the nature of the cargo; 50% of the weight.

Q. Do you mean coal or cargo? A. I mean cargo of course.

By Mr. Putnam:

Q. Suppose that this vessel carries with her ordinary loaded draft, for example, 800 tons; that includes the
958 coal. Then your idea is that light laden she would carry 50% of that, certain? A. Yes; she would carry quite that.

Q. How much water ballast does the *Ceres* carry? A. She has what is called a celluiar double bottom——

By the Court:

Q. Suppose they had 400 tons of coal aboard? A. Then of course she couldn't carry it.

Q. Suppose that she had started with 400 tons; do you mean to say that to be light loaded she couldn't
959 take any cargo at all? A. If she had 400 tons in addition to her water ballast there wouldn't be room for cargo; that is if she was light laden.

Q. Then under such circumstances she couldn't take any cargo at all to be light loaded? A. Under those circumstances it would be so.

Q. Do you mean to say that what you would understand by the clause in the charter party; a vessel hired to carry cargo and providing for a light draft, do you think it would mean that with the coal that she might
960 start with, and the water ballast, she would be incapable of carrying any cargo? A. If she was down to that draft, 13.7½, or thereabouts, because that I consider would be the light load draft.

By Mr. Putnam:

Q. It would be very light loaded 13.7? A. That is a matter of opinion.

Q. What amount of water ballast does the *Ceres* carry? A. She carries 230 or 270; I am not quite

sure; between two and three hundred tons, and she 961
has capacity for a great deal more than that.

Q. You know the *Ceres* left this port on the 11th of November, 1893, on a north Atlantic trade; you don't know what her draft was at that time? A. No, sir.

Q. As a matter of fact your surveyors don't examine the load line of vessels going in and out of port unless called upon to? A. That is so.

Q. Suppose that you were informed that she drew over 16 feet mean draft, north Atlantic, on the 11th of 962
November; would that change your opinion of light loaded? A. That would be very deep loaded.

Q. Would that change your opinion of what would be light loaded? A. No; just the same as I expressed a moment ago.

Q. Would you consider a voyage from New York to Spain North Atlantic?

Objected to that there is no evidence in the case so far that the vessel has ever been on such a voyage. 963

Q. The way that you have reached light loaded is by dividing the deep load draft with the draft of the vessel without any load in her, isn't it? A. Yes; quite so.

Q. You take half way between? A. Between the two points; 11.6 is the starting point.

By the Court:

Q. What does that draft represent? A. That she 964
has her water ballast in and some coal and then she is drawing 11.6 with nothing in the hold.

Q. How much coal for the round voyage, or for a single trip? A. For a single trip.

By Mr. Putnam:

Q. You say you think 11.6 is her draft with her water ballast and some coal? A. That is what I am informed by the captain.

965 S. W. Flood, being duly sworn and examined as a witness for the claimant, testifies:

By Mr. Kirlin:

Q. What is your occupation? A. I am general agent for several Marine Insurance companies.

Q. Have you had occasion to consider the question when a vessel is light loaded and when heavy loaded? A. Yes, I have.

966 Q. Do you know the steamship *Ceres?* A. Yes, sir; I have had her under my supervision.

Q. Assume that she would draw 11.6 in ballast and that her deep draft is 15.9; what would you say her draft should be at the outside, light laden? A. I would just take the half between the two, between the light ship and the heavy load line, as we call it, 13.7½ or 13.7.

Q. And anything above that would you consider heavy load? A. Yes, sir; anything above that would

967 be considered heavy loaded.

Q. The amount of cargo that the vessel would carry on that line would depend somewhat on the character of it and where stowed? A. Certainly.

Q. And would also depend upon where the coal was stowed? A. Certainly.

Q. Do you think the proper test would be draft, or weight of cargo on board? A. Weight of cargo on board.

Q. The character of it? A. The character of it.

968 Q. If it was stowed high, so that she would have to carry 200 tons of water ballast, she couldn't obviously carry as much cargo as if it was in the bottom? A. Certainly not.

Q. Therefore, wouldn't it be a better test to take the draft instead of the amount of cargo, in order to decide whether she was light laden or not? A. It is a practical question; I would rather take them both into consideration.

Q. But in any event, if it was 2 or 3 inches more than 13.7, whatever was inside whether it was cargo or

ballast, you wouldn't consider it light laden? A. No, I would not, sir. 969

Cross-Examined by Mr. Putnam:

Q. You said that the *Ceres* was insured in some of your companies? A. No, sir; but I have been called on to survey her.

Q. You have no knowledge of her actual load line? A. No, sir; only what I see from the books and what I could see in March when I examined her.

Q. Suppose that a hundred tons of cargo would raise her up in the water 9 inches; what would you say was the way she was loaded? 9 inches above her deep draft? A. I would say that she was loaded 9 inches less than her draft. 970

Q. Wouldn't you say that that was lighter (9 inches) than her full draft? A. Yes, sir.

Q. Isn't it pretty difficult to say what is light loaded in a charter party? A. It is an open question which rests more on experience than on figures.

Q. Have you ever had occasion to consider the precise meaning of the words light loaded? A. I wouldn't swear to it; I have handled so many cases. 971

Q. Of course, we understand what a vessel is, light; and, of course, the term means that she must have cargo on? A. No, it means that a light vessel can also be an empty vessel; light loaded is another thing.

Q. Light loaded means some cargo; but not down to her deep marks? A. Yes, sir.

Q. Just how far down is quite a question? A. It is an open question. I think that is a question of experience and good judgment. 972

973 THOMAS M. NICHOLS, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. Kirlin:

Q. What is your business? A. Marine surveyor for underwriters.

Q. Have you supervisory charge of the loading of vessels in certain lines? A. Yes, sir; I superintend the loading of certain lines.

974 Q. Do you have occasion to remark the draft of vessels? A. Yes, sir.

Q. Do you know the steamship *Ceres*? A. I have seen her several times.

Q. Assume that the *Ceres* draws 11.6 in ballast and 15.9 deep laden, how much should you think the outside limit of draft for her would be light laden, judging from your experience? A. Anywhere from the light load to half way between deep load and light load; anywhere between what she would draw without any cargo and what she would draw with half
975 a cargo; half of her dead weight capacity with full cargo and coal on board.

By the Court:

Q. You mean everything she can put aboard, do you? A. Yes, sir; I mean a cargo; half of that dead weight capacity would be a fair light draft; light laden.

By Mr. Kirlin:

976 Q. The clause occurs here in the charter party, a fruit charter, where the vessel is guaranteed to make 11 knots "fruit or light laden;" and the question occurs upon the meaning of those words in that clause; the question is whether you can give us any idea as to what the draft of the steamer would be light laden, within the meaning of that clause? A. I should say 13.6 would be a very fair draft, considering it a question of speed.

Q. Would you say 14 feet would be the outside? A. That would be a very liberal estimate.

CROSS-EXAMINED by Mr. Putnam: 977

Q. You have certain kinds of cargoes that you call heavy cargoes and certain light cargoes? A. Yes, sir.

Q. You call fruit generally a light cargo? A. Yes, sir.

Q. If she was loaded with fruit you would call that a light cargo, if loaded with the usual quantity of fruit and with other merchandise? A. Yes, sir; with hay or cotton or bones or hides.

Q. If loaded with those articles it would be light laden? A. Well, I should think the vessel would be 978 fairly light.

Q. Did you ever have that clause in a charter party brought to your attention before to determine the meaning of the words? A. Well, I don't call it to mind now.

Q. Wouldn't it be a fair interpretation of that, in your judgment, to say it was loaded with a cargo of what you describe as a light cargo, like fruit or cotton or hay; light laden? A. Yes, sir; if there was 979 nothing else.

Q. Other cargo of some general description? A. Yes.

Q. Of course there are other cargoes like salt and iron that you wouldn't call light weight? A. Yes, sir.

Q. Did you ever before reach the conclusion that light laden meant dividing the heavy draft and the light draft and taking the mean between the two? A. I have often thought of it.

Q. Did you ever have a case come before you in 980 which you disposed of it? A. I don't know that I ever have.

Q. You often have ships that you superintend the loading of and instruct the master how deep he may load and accept it for the underwriters? A. Yes, sir.

Q. You take a small vessel of the capacity of 800 tons, would the raising her up 9 inches make quite a difference in what you call her load line? A. No, sir; not as far as the speed was concerned.

981 Q. I am not speaking of the speed; I am speaking of what you call light loading?

Objected to, the clause in question occurring as a guarantee of speed.

Q. Would you consider 9 inches taken off of the full draft would make her lighter laden and lighter draft? A. It would make her lighter laden, more buoyant at sea; but I don't know as it would make a great deal of difference about the speed.

982 Q. Could you apply this same rule if the difference was only 2 feet between the vessel light with ballast, and the vessel loaded to her full capacity? A. If they have got to put in coal and water and one stuff and another to give her good stability and put her down to 13 or 13.6 before any cargo is put in, I should say that the water ballast and coal was all that she ought to have; that is, if you come to a question of speed.

Q. You have laid down the rule that you take the mean between the vessel light and the vessel loaded;
983 I want to know if that is a rule that you would apply where the difference is only two feet. In this particular case you say you divide between 15.9 and 11.6, and the mean between those two you would say was light loaded? A. Yes, sir.

Q. Now I want to know whether you would do the same if the difference between the two drafts was only 2 feet; suppose it was so the difference was only 2 feet between them; how would you then get at it between a vessel drawing 13 feet without cargo and 15 feet with
984 cargo? A. I should say that if the cargo only put her down 2 feet, why 50% of that would be just half of it.

Q. Would you say that she was light loaded then? A. If there was only a difference of 2 feet, yes, sir; I should think so; I should consider that a vessel was light loaded if she was only submerged in the water one-half of her draft.

Q. You would make that for any difference, either 10 or 20 feet, you would take one-half and say that was light loaded? A. No; I say anywhere between what she would require in ballast and what she would

carry, her dead weight capacity, it would be light 985
loaded.

Q. Some ships don't carry any ballast at all? A. No.

Q. You take a ship of that kind, that carries no ballast, and the difference between light and loaded lines may be 20 feet; now would you take one-half as representing her light load? A. Whether she had ballast or whether she had no ballast?

Q. No, no ballast at all? A. I can't see where the difference comes in whether it is ballast or whether it 986
is cargo.

Q. Take a ship empty, that has no ballast in her at all and doesn't require any, and the difference between her load line empty and full is 20 feet; what rule would you apply then? A. I understand that a vessel requires a certain amount of ballast and coal to go to sea.

Q. I am putting you a case of a vessel that doesn't require any ballast whatever; for example, take a sailing vessel; what would you say a vessel was, light 987
loaded, where the difference between the vessel light and full loaded was 20 feet? A. A sailing vessel that has got a very light cargo wouldn't require ballasting anyhow.

Q. I haven't put any question about cargo except to ask you what you would say is light loaded where the difference is 20 feet between the light and loaded line? A. I don't think that is a specific case; a light ship would draw 10 feet and load her down 20 feet; that would be 30 feet. You say the difference between the 988
light load and the deep load would be 20 feet; I don't know of any such case.

Q. Suppose it was 12 feet, you still take one-half, would you? A. Well, I should consider about 50% of the dead-weight capacity of the ship between the light and the loaded.

By Mr. Kirlin:

Q. Are there certain cargoes which are known com-

989 mercially as light cargoes, distinct from others known as heavy cargoes? A. Yes, sir.

Q. Cotton and tobacco, bones and hides? A. They are all light cargoes.

Q. How much would a cargo of that kind put a ship down; what proportion of her draft between empty or full loaded? A. I should think that from two-thirds to three-fourths of her total draft; that is, when she is heavily laden with tobacco and coffee; of course hides and dried bones would not put a ship so deep in
990 the water.

Q. How much would that use up? A. Probably one-half of the draft.

Q. Cotton is screwed in, is it not? A. In most cases.

Q. So that it takes up less space than it apparently would, and you get more weight in? A. Yes, sir.

991 James R. Hall, being duly sworn and examined as a witness for the claimant, testifies:

By Mr. Kirlin:

Q. Of what firm are you a member? A. W. W. Hurlbut & Company.

Q. What is their business? A. Steamship brokers.

Q. What is a large part of their business? A. Fruit business, chartering steamers for the fruit trade.

Q. In fruit charters is it usual to find a guarantee of
992 speed? A. Not usual.

Q. Does it frequently happen? A. It does.

Q. How do they come to be put in? In the ordinary course of trade what usually antedates them? A. The necessity to; because the bananas they carry need speed.

Q. Before those clauses are put in, when they are determined upon, what passes between the parties? A. We generally are asked by the owners what trade the steamer is required for.

Q. And the clause is put in with special reference to 993
that trade, is it? A. Exactly; yes.

Q. Have you within the last three or four years made many charters with guarantees of speed in them? A. Somewhere about 20; between 20 and 30.

Q. Are you acquainted with the clause "owners guarantee steamship to make an average speed under steam of not less than knots per hour, fruit or light laden, in moderate weather"? A. Yes, sir.

Q. Is that clause often used? A. Yes, sir; I be-
lieve we were the first to originate that clause. 994

Q. W. W. Hurlbut & Co.? A. Yes, sir.

Q. Has it a well-known trade-meaning amongst brokers and fruit merchants? A. Well, we have had guarantee clauses in other steamers.

Q. Is there generally a received meaning for this clause amongst those who use it? A. Well, it depends upon who are the contracting parties.

Q. Take fruit merchants on one side and ship owners on the other? A. I should say that the owners would
generally ask in what trade the parties were. 995

Q. Assume that the owners know that a clause has been put in; what is the understood meaning of it, if there is any understood meaning? A. That the boat would have to do the required speed with a cargo of bananas, or its equivalent weight.

Q. With other cargo? A. I suppose so; yes.

Q. Would that mean equivalent draft as well? A. Well, I suppose a hundred tons of bananas would put the steamer down as well as a hundred tons of lead.

Q. But they would have to be stowed differently, 996
and might not have to carry so many bananas and might have to carry more? A. I am not sufficiently expert to express an opinion.

Q. Your understanding of the clause is that if it is to carry something else besides fruit it to be the equivalent in weight, is it? A. Yes, sir.

Q. Could you express an opinion on what would be a light cargo; what would be the draft of a vessel light laden if in ballast she draws 11.6 and deep laden 15.9? A. No, I should not like to.

997 Cross-Examined by Mr. Putnam:

Q. You say that you had about 20 charters with speed guarantees? A. Yes, sir.

Q. Those steamers nearly all were for the fruit trade? A. All for the fruit trade.

Q. In that trade it is mostly the carriage of bananas, isn't it? A. Principally.

Q. Those steamers are expected to carry bananas in addition to water ballast? A. No; not in addition.

998 Q. You mean that the steamers don't have water ballast? A. I mean to say they have water ballast, but are not required to carry it.

Q. But they are expected to bring up the usual fruit cargo of bananas from the West Indies ports, are they not? A. Yes, sir.

Q. There are certain cargoes that are known as light cargoes and certain as heavy cargoes? A. Yes, sir.

Q. Cotton and hay and such things are supposed to be light cargoes, are they not? A. Yes, sir.

999 Q. Do you think you have had this exact clause in any of your other charter parties you speak of? A. I believe so.

Q. Could you mention any steamers that have had this identical clause? A. I think the steamer *Leone*.

Q. Is it a well-known fact that in the carriage of bananas speed and punctuality are very necessary? A. Very necessary.

Q. If they fail to do it it leads to damage? A. Yes, sir; no question about it.

1000 Q. I call your attention to these words of the guarantee: "to make the average speed under steam, of not less than 11 knots per hour"; do you think your other guarantees are the same? A. I believe so.

By the Court:

Q. That says "in moderate weather"; does that mean that the speed sometimes will be greater than 11 knots? A. No; if she made only 10 knots one day she would have to make more to carry it up the next.

Q. You understand she will average that if the weather and coal are as required? A. Yes, sir.

By Mr. Kirlin: 1001

Q. It states that only "in moderate weather"; you don't understand that she will have to do it in any other weather? A. Certainly she can't make 11 knots against strong head winds; certainly not.

WILLIAM ANDERSON, being duly sworn and examined as a witness for the claimant, testifies:

1002

By Mr. Kirlin:

Q. What ship are you master of? A. Steamship *Arden Mhor*.

Q. How long have you been a master mariner? A. About 20 years.

Q. Been going to sea all that time? A. Yes, sir.

Q. How long have you been in steamships? A. About from 25.

Q. Where are you trading now? A. Down to the West Indies and New York. 1003

Q. What kind of cargo do you have? A. General.

Q. What is the extreme deep draught of your vessel? A. 22.3.

Q. What does she draw in ballast empty? A. About 10 feet; 9½ to 10 feet.

By the Court:

Q. Is that sailing trim? A. No; empty ship.

By Mr. Kirlin:

Q. What is the lightest draft that she is seaworthy in, going to sea? A. She would go to sea without ballast. 1004

Q. 10 feet you should call seaworthy? A. Yes, sir; but we fill up her ballast tank with 500 tons; that would be 2 feet more.

Q. What kind of cargoes do you carry; light or heavy? A. All the cargoes from here——

Q. What do they consist of? A. General cargoes; general merchandise.

1005 Q. Give us an idea. A. I could hardly tell you something we haven't got.

Q. Cased goods? A. Cased goods and wagons and railway material and barrels; the general cargo; the expression includes everything.

Q. What is her usual draft laden with these light cargoes bound from New York to West Indies? A. My draft last voyage was 16 feet mean.

Q. That is about half-way between light and deep? A. Just about; yes.

1006

By the Court:

Q. Do you call that full load; full cargo? A. Yes; deck cargo as well, some on deck as well.

Q. What do you consider the extreme draught of the *Arden Mohr* to make certain speed light laden? A. I reckoned I was light laden ship last voyage with that draft.

Q. You think that would be fair light laden within the meaning of the guarantee clause which required
1007 the steamship to make a certain speed light laden? A. Yes, sir; I reckon that was fair, average.

By the Court:

Q. Suppose the cargo was such as to draw 18 feet? A. That would give her more immersion; she wouldn't steam as well.

Q. Would you call that light laden or not? A. I wouldn't say it was exactly light laden.

Q. Suppose you had about the same general cargo at that time; if she drew 18 feet would you call that
1008 light laden or not? A. I wouldn't call it deep laden; I mightn't call it exactly light laden either.

Cross-Examined by Mr. Putnam:

Q. What is the tonnage of your vessel? A. Registered or gross?

Q. Both. A. 1,338 net; 2,081 gross.

Q. What is the total dead weight capacity of your ship? A. 3,200.

Q. You carry, then, about 50 per cent. over your

gross tonnage? A. Well—yes, about—somewheres 1009
about that.

Q. Do you ever carry fruit in that steamer? A. Not in that steamer, no.

Q. There are 3 terms; a vessel is empty or light; a vessel is in ballast; a vessel is loaded; what is the rule that you make for light load? A. I don't know as there is any rule.

Q. It is just a matter of opinion, isn't it? A. Well, it is a good deal a matter of opinion; of course you have an expression, a light ship or a deep ship. 1010

By the Court:

Q. Did you ever carry under a charter in which that phrase was employed? A. No.

By Mr. Kirlin:

Q. Would there be any difference in the speed of a steamer trimmed one foot by the stern or trimmed 5 feet by the stern having the same mean draft? A. It would make considerable difference.

Q. What difference? A. If the ship is too much by 1011
the stern her quarters gets into the water and drags the water off her and doesn't get away free; it stops her speed.

Q. Would that make any difference in her steering? A. Yes, it is apt to.

Q. Suppose your vessel were steering between 2 points on the chart and she was 5 feet by the stern, would you make much more through the water than those direct points? A. Weigh her quarters down in 1012
the water if you are too much by the stern; deep, I mean.

By Mr. Putnam:

Q. Of course you want to submerge your propeller, don't you? A. Yes, sir.

Q. And if the vessel is otherwise light you must bring her down enough to submerge the propeller? A. Yes; but not to submerge her altogether; you have got her too deep then.

Q. That is a matter for the captain, to stow his car-

1013 go? A. If you have bananas, you can't stow them—you must stow them fore and aft.

Q. But water ballast is for the purpose of trimming the ship fore and aft? A. Yes.

Q. Have you got any peak tanks? A. Yes.

Q. Aft or forward? A. Aft.

Q. If you have a forward peak tank that is for the purpose of bringing the vessel to trim? A. If you mean by the stern, yes, sir.

1014 By the Court:

Q. You call hides and skins light cargo? A. Dried hides would be light cargo.

Q. How about rubber? A. I have got no experience; I can't say.

Q. Suppose you had sixty or eighty tons of coffee? A. That would be dead weight; that is heavy.

WILLIAM L. RATHBUN, being duly sworn and exam-
1015 ined as a witness for the claimant, testifies:

By Mr. Kirlin:

Q. What is your business? A. Importing bananas.

Q. Under what firm name? A. The Aspinwall Fruit Company.

Q. Do you receive bananas from Colon? A. Yes, sir.

Q. How many during the year? A. Thirty-six cargoes about, a year; three times a month.

1016 Q. Can you tell us what the average weight is of the different grades of bananas? A. It very much depends upon the quality of the cargo?

Q. Give us the different qualities, and limit your answer to the months of April and May. A. A very good cargo would average in two classes, the firsts and seconds; and very best will average in the firsts, seventy-three pounds and in the seconds, forty-one pounds; but that is a very good cargo of bananas during the month of May, after the rains begin.

Q. Were you acquainted with the kind of cargoes

Wessels & Co. received from Colon? A. I believe I 1017
saw a number of the cargoes; I saw the one in dispute.

Q. What class was that? A. That was below the average.

Q. What would you say the bananas of that cargo would average in weight? A. It is pretty hard to tell that; but the fruit was very poor fruit; but I don't believe they could have gone below the average on a cargo like that; between thirty-five and forty pounds I should say.

Q. Is there any way by which you can tell just 1018
what the cargo from Colon weighs? A. Yes; we get the bill of the exact weight.

Q. Where from? A. From the Railroad Company down there.

Q. Panama R. R. Company? A. Yes, sir.

Q. Would that be true of these Wessels cargoes? A. I don't know; I think so.

Cross-Examined by Mr. Putnam:

Q. Do you know which cargo it was that you saw? 1019
A. The last one that came from there.

Q. Do you remember what day it was? A. I do not; I went down to the dock to see the vessel.

Q. Had any cargo been put out then or was it all in? A. It was being discharged; they had started half an hour before I got there.

Q. Did you purchase any of it yourself? A. No, sir.

Q. Made a casual examination? A. That is all.

Q. What was the condition of it as to being ripe or 1020
not? A. Yes, it was some ripe.

Q. Would you say over-ripe? A. A little more than would be expected in a cargo for that distance.

Q. Of course you didn't stay there very long? A. I did not; I looked down the hatches; you can't tell much from looking down the hatches.

Q. How many bunches did you see to form a judgment from? A. Those that were around the hatches and those that were being passed out, and I saw 2 or 3 trucks that were being loaded.

1021 Q. Do you remember what time of day you were there? A. No, I do not.

Q. You didn't yourself weigh or see weighed any bunches? A. Not from that cargo, no.

Q. Did you at that time import any bunches that were 15 and 20 pounds weight? A. No.

Q. You know all these bananas are classed by the 6 hand? A. Yes, sir.

Q. Did you import any 6 hand fruit at that time? A. No.

1022 Q. You imported larger bunches? A. Yes; from 7 hands up.

ALBERT SPENCER, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Putnam:

Q. You have followed the sea and you have been a surveyor for many years? A. Yes, sir.

1023 Q. How long have you been a surveyor? A. 23 years.

Q. For what institution? A. Bureau Veritas; classification.

Q. Are you now the chief surveyor? A. Yes; for the whole United States.

Q. You have had occasion to survey vessels and to determine the load line and draft of vessels during that time? A. Yes.

Q. What in your judgment would be light laden or
1024 light loaded for a vessel which carries 820 tons of cargo and coal? A. Her gross carrying capacity would be 820. The term "light laden" is so indefinite that it is subject to a matter of opinion; I should judge any vessel that had 700 tons would come under the term of light laden if 820 tons she carried.

Q. How much in your judgment would that raise the load line of the vessel? A. On a vessel of that size, I should think, in the extreme, 9 inches.

Q. That in your judgment would make her loaded, but light loaded? A. Light loaded I should term it.

Q. Did you ever hear before of dividing the deep draft and the ballast draft to reach any result about light loading? A. No. 1025

Cross-Examined by Mr. Kirlin:

Q. Did you ever hear before of taking 820 tons as an example? A. I said it was a matter of opinion.

Q. The question here occurs in a clause in the charter-party which requires a vessel to make speed; the clause is: "The owners guarantee the steamer to make an average speed under steam of not less than 11 knots per hour, fruit or light laden, in moderate weather," would lightening her 9 inches by the subtraction of 120 tons enable her to make much better speed than full laden? A. Yes, nearly a knot an hour. 1026

Q. You are speaking now of light laden with reference to insurance than speed, aren't you? A. No.

Q. Have you ever been to sea in steamers? A. Not as master, as passenger.

Q. Then the increase of speed by 9 inches less draft is a matter of judgment? A. A matter of judgment entirely. 1027

Q. Based upon your observation as a passenger? A. Upon my observation as a passenger, yes.

Q. Did you ever have occasion to remark the different drafts of vessels as passenger? A. I always remark that very quickly after I get on board.

Q. Have you had occasion to remark the difference in speed in the same vessel with the difference of 9 inches in draft? A. Not exactly; but from conversations with masters I should judge that would be about the ratio. 1028

Q. What would you call a load that a vessel had got to put her——that consisted of 2/3 of her gross dead weight? A. That would come in the same line as being light loaded.

Q. Wouldn't that be a fairer interpretation of the words "light laden" than it would be to put her down to within 9 inches of her deep draft? A. The term used is very vague; there are only three terms; light,

1029 ballast line and load line; anything above that loaded line, 6 inches, 9 inches, she is lightly loaded.

Q. The primary object being to make speed and the difference between her ballast draft and her deep draft being 4.3, don't you think that about 2/3 of that difference would be a fairer interpretation to put upon the words "light laden" than to say that she would be within 9 inches of a deep draft? A. You have got to take into consideration the model of a steamer, and the power; you can't fix it on any individual steamer
1030 unless you know the power and the model of it.

Q. Do you know those elements in the *Ceres?* A. No, I do not.

George R. Burrows, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Putnam:

1031 Q. You are now engaged with the Columbian S. S. Co.? A. Yes.

Q. In what capacity? A. As assistant superintendent.

Q. Those steamers are in what trade? A. Run between New York and Aspinwall.

Q. In the Pacific Mail? A. Yes, sir; Pacific Mail boats.

Q. How long have you been connected with that Company? A. Since January last.

1032 Q. You have also had experience at sea? A. Yes.

Q. For how many years? A. 4 or 5 years; 5 years as purser.

Q. Do you, as assistant superintendent, have to do with the loading of those steamers? A. Yes; I supervise the work.

Q. Will you just state what steamers they are? A. The *Newport*, the *Columbia* and the *City of Para;* they belong to the Pacific Mail and are chartered by the Columbian Line.

By the Court: 1033

Q. About what is their draft? A. The draft varies; they draw sometimes 20 feet, 21 feet.

Q. Are the 3 about the same capacity? A. The same capacity.

Q. What is their ballast draft? A. That I couldn't tell you without a scale.

Q. What is the full load? A. When they are drawing 20 feet or 21 feet.

By Mr. Putnam: 1034

Q. Can you make any general rule giving what their ballast draft is? A. No; I could not.

Q. They always bring some cargo? A. Yes; they always have weight in them.

Q. You have occasion to consider what is light laden in loading your ships, do you not? A. Well, we get the weight down; but I should have hard work to define light laden to please everybody

Q. That is rather a matter of opinion you think? A. It is a matter of opinion. 1035

Q. What in your opinion does the term light laden imply? A. I suppose when the ship is not loaded.

Q. I will ask your opinion under the guarantee on a time charter party in these words: "Owners guarantee the steamer to make an average speed under steam of not less than 11 knots per hour, fruit or light laden in moderate weather with good American coal." What would the term light laden mean in your judgment in the case of a vessel whose full capacity was 820 tons? A. I would say she was light loaded if she has half 1036 her full weight in her.

Q. How much of a margin would make light laden? A. If she falls short of the full weight she must be light loaded.

Q. In case a vessel's load line were raised from 6 to 9 inches, would that be certainly light loaded? if she was drawing 6 or 9 inches less than she draws with her full capacity? A. Yes; I should think 2 or 3 inches less would make a difference.

1037 Cross-Examined by Mr. Kirlin:

Q. Do you think that the meaning of the clause if she was drawing 3 feet less than her mean draft she was light laden? A. I think so.

Q. Would that be true of 2 inches? A. An inch makes a difference; if she is an inch from her marks I don't consider her loaded.

Q. You consider her light loaded? A. Light loaded; yes, sir.

1038

Examination of Captain Svensson resumed:

Q. What was your draft on leaving Colon on the 9th voyage? A. 15.9 mean; aft on the 19th 17 feet, and 14.6 forward.

Q. Had you awnings on board on both those voyages? A. Yes.

Q. When did you get those awnings? A. I got them in England just before coming out under the
1039 Wessels charter.

Q. Were they new then? A. Yes; made in England for the purpose.

Q. What kind of canvass were they made of? A. Cotton duck.

Q. Do you know the number? A. I couldn't exactly say the number; but it wasn't lighter than No. 4.

Q. Would they shed rain? A. Yes, sir; we telegraphed from Malmoe when the charter was made.

Q. How many of those awnings did you have? A.
1040 Five altogether.

Q. How much of the ship did they cover when they were all set? A. The whole length of the ship except the space for the masts, the bridge and in the engine-room; they covered the hatches and along the whole deck.

Q. Did you get any additional awnings on arriving in New York? A. Yes, sir; we got one awning from Wessels & Co.

Q. Did you use those awnings during all the time you were under the Wessels charter? A. Yes, sir.

Q. And the one they also gave you: A. Yes, sir. 1041

Q. Did you have all those on board on the 8th and 9th voyages from Colon? A. Yes, sir.

Q. And if they had been inquired for they would have been produced? A. Yes, sir.

Q. How many awnings were up on the 8th voyage? A. We had the same awnings.

Q. All up? A. All up when we needed them.

Q. Were they all up at the time it rained? A. Yes, sir.

Q. Who directed when they should be put up? A. 1042
The supercargo was aboard for that purpose.

Q. And whenever he wanted them up were they put up? A. Yes, sir.

Q. Do you remember any occasion when it rained when all the awnings were not up? A. No, sir; I don't remember it.

Q. Did you hear Mr. Mowbray testify a day or two ago that there were not enough awnings to cover the ship? A. Yes.

Q. Was that true? A. No, sir. 1043

Q. What business did you go into with the ship after the Messrs. Wessels rejected the charter? A. She got chartered to H. Dumois & Co. then.

Q. What trade did she go in? A. Between New York and Cuba.

Q. What trade? A. Fruit trade; the same as Wessels.

Q. Did you use those awnings on those voyages? A. Yes.

Q. How long were you chartered to Dumois? A. 1044
I was chartered last on finishing the Wessels charter; I came to Dumois and stopped in his service for about three and one-half or four months.

Q. And were you under charter to them this year again? A. Yes, sir, the same way; I was in his service about six months.

Q. Carrying bananas? A. Yes, sir.

Q. Did you use the same awnings on those voyages for Dumois? A. Yes, sir.

Q. Did you have any new awnings? A. No, sir;

1045 only but one I made myself for the after deck to cover the cabin.

Q. Did you carry anything else besides fruit as a rule while under the Dumois charter? A. No, sir; just fruit.

Q. What speed did you make? A. In moderate weather 11 and over 11.

Q. On what draft? A. About 14 mean and less the whole time.

1046 Claimants' counsel offers in evidence a certificate from Dumois, as to the awnings and speed. It is marked Exhibit 89.

Q. While she has been under the two charters to Dumois has there been any difference in her engines, boilers and furnaces from what their condition was under the Wessels charter?

A. No, sir; none whatever.

Q. Has there been any change made in the machinery?

1047 A. No, sir; nothing.

Q. When you came off the dry dock when your vessel was rejected by the Messrs. Wessels, did the *Ceres* proceed to sea immediately under the Dumois charter? A. Yes, sir; two days after she came off the dry dock; it was Thursday, the 26th of May; she left the day after she came out of the dry dock.

Q. Have you gone through your log books and made an abstract of the draft of the vessel when you sailed for Messrs. Dumois fruit laden? A. Yes, sir;

1048 this is it.

Claimants' counsel offers the abstract in evidence and it is marked Exhibit 87.

Q. Referring now to the period of the lay-up in Mobile, January, 1892, was your vessel in need of any repairs or overhauling at the time you received orders to lay up from Wessels? A. No, sir.

Q. How recently had she been docked? A. Less than a month before.

Q. What was done then? A. Everything needed;

she was repainted, and that was the reson she was laid 1049
up; but there was some small repairs done to the boilers, I think new patches put on, or something; but the engine didn't need any repairs and nothing else needed any.

Q. When you received the order to lay up was there any boiler tubes leaking? A. No, sir.

Q. Any patch leaking? A. No, sir.

Q. Any trouble with the furnaces? A. No, sir.

Q. Was there anything that needed to be done about that time for the ship? A. No, sir. 1050

Q. Did you on Wessels instructions attach cargo belonging to Vanderbilt, just previous to the lay-up? A. Not cargo; but some of his belongings, some money of his.

Q. Did you retain that until Messrs. Wessels instructed you to release it? A. Yes, sir.

Q. Those instructions were in writing, were they? A. Yes, sir.

Q. When you were in Colon on the last voyage did you give any order as to when the fruit should be 1051
loaded? A. Not the last voyage.

Q. Do you remember any rainy day in coming from Greytown, or in going to Greytown, on that last voyage? A. Not either coming or going; but the time we were laying there it rained very heavy, both days and it interfered with the loading and we had to lie there a day more than we expected.

Q. More than while you were loading at Greytown? A. Yes, sir.

Q. That was the reason why you were a day late? 1052
A. That is the principal reason; we were later than we expected at Colon.

Q. Was Henry Wessels with you in Greytown? A. Yes, sir; and he knew what the cause of the delay was and he stopped ashore with a friend of his.

Q. After you left Colon on both the 8th and 9th voyages, did you prosecute them as fast as you could under the circumstances? A. Yes, sir; I did.

Q. Why couldn't the *Ceres* come faster? A. The first of the two voyages in question she was partly

1053 deep loaded and it was partly through bad weather we had.

Q. Do you know whethe the engineers did anything to the boilers on either of those occasions in Colon, or in Central America? A. The first voyage he spoke about the boilers giving way a little bit on the top; but there was nothing the matter, not more than that we could prosecute the voyage as fast.

Q. Did that affect the speed any so far as you know? A. No, sir.

1054 Q. Did you make any request to any of the Messrs. Wessels to go into dock in New York at the end of the 8th voyage? A. I did at the end of the 8th.

Q. How did you come to make that request? A. While going on recharter for the Coal Company down in Pensacola, laying down at Greytown there was a lighter made a hole in the side and I got it temporarily patched in Greytown, and going from there to Pensacola I got a better patch on, but under instructions from Lloyd's agents we were to go into dock the first

1055 dock we came to.

Q. Did you ask leave? A. When I came to New York afterwards I told Wessels about this thing and I made the report to Mr. Congdon about it; but Messrs. Wessels told me that they wouldn't under any circumstances give me leave at that time on account of this being the best time for the fruit trade; so they asked me to get leave from Mr. Congdon to go 1 or 2 voyages more.

Q. Did you do so? A. Yes, sir; and then on the

1056 8th voyage I told them again about it because that was the time this defect in the boiler was come; and on account of the way he examined this defect he found that there was some substance in it, sediments inside of the boiler, and he would have them cleaned for that voyage; but they gave me the same answer; then next voyage they said I could go into dock.

Q. So you would have docked the vessel and cleaned the boilers at the same time if you had had leave? A. Yes, sir; and at the end of the 8th voyage she commenced to get dirty, and she couldn't make her

speed and I told the Wessels' and they made some 1057
suggestions to me about the subject and I said it is quite 4 months since I was in dock last and it is quite long enough to go because there is always some sediments comes in.

Q. What difference in speed does the trim of your vessel make as she was trimmed under the Wessels charter on the last two voyages? A. Going down she was laying 5 feet by the stern every voyage, and that makes a good deal of difference in the speed of a vessel. 1058

Q. Does it make any difference in her steering? A. Yes, sir; because being so deep by the stern, the stern goes more around like and drags the water with it.

Q. Did she make more knots between two points on the chart than a straight line? A. Yes sir; she did.

Q. Assuming the log to have no error, the taffrail log, would the variations of from 3 to 6 knots be an excessive difference between the distance made in 24 hours and ascertained by observations and as ascertained by the taffrail log? A. A very small difference. 1059

Q. Under any form of trim? A. Under any circumstances.

Q. On the various fruit voyages, or on the last voyages were you under any agreement with Messrs. Wessels to receive compensation for services which you were performing for them? A. Well, they promised very much, but they never kept it.

Q. Did you understand that you were to receive compensation for what you were doing for them? A. Yes, I did understand it; especially those last voyages 1060
down to Colon on account of going to establish a trade down there.

Q. Do you know whether any commissions were paid under clause 34 of the charter party during the period of lay-up in Mobile? A. Yes, sir; they were paid both from the time they were laid up and for the extension of the charters. Under the Wessels charter we had to pay to this freight agent of Messrs. Wessels.

1061 Q. You paid that for the months after they threw up the charter? A. I believe so, yes, sir.

Q. Do you know whether the *Ceres* ran in schedule with other vessels operating for Messrs. Wessels? A. Yes, sir; for some length of time.

Q. Reference was made Friday, by the stevedore, to having placed the coals in the tanks, where is that situated? A. Just before the bridge; it is called the tank because when she was built she was built for going in the ice trade, and this is the regular cargo
1062 hold but it is built around with iron for ice.

Q. How often is coal put in there? A. Well, we put it in several voyages there, I can't exactly remember.

Q. Was it there on either of the last two voyages? A. I believe we had part of it but I am not sure.

Q. How did it come to be put there always on deck? A. According to Wessels' instructions; I asked them where was the best place to take the coals and they told me to fill first the bunkers and then the place up
1063 between decks abaft; the place in the alley ways, and we took the rest of the coals there, as far as to that hatch; and if we had to make a voyage not to interfere with the holds where we should carry the fruit, and have a certain amount of the holds in dry condition.

Cross-Examined by Mr. Putnam:

Q. Were you in New York when this suit was begun in 1892? A. Yes, sir.

1064 Q. You were examined in August, 1892, were you not? A. Yes, sir.

Q. You made a statement of your case then to your counsel before you were examined? A. Yes, sir, I did.

Q. A statement in writing? A. A statement up in the office.

Q. Then you were of course examined regularly in the case when I was present to put you questions, were you not? A. The only thing I remember was when I was examined as a witness by you and Mr. Convers.

Q. Did you ever state at that time anything about 1065
the loading of the vessel; that she was too much loaded to make the guaranteed speed? A. It might have slipped my mind that time; because I was very busy with the loading of the ship going to Europe; I had too much to think about.

Q. When did it first occur to you that the ship was too heavily loaded to make the guaranteed speed? A. Since I came to see him.

Q. When? A. Going over to Europe from New York. 1066

Q. Going on the voyage from New York to Europe? A. Yes.

Q. What month? A. It was in September, 1892.

Q. Did you ever say to Mr. Wessels, either or any of them, that that was the reason that the vessel didn't make her speed? A. I said that to them frequently; that she was too deep loaded.

Q. Was it the fact that you made complaints always about the coal? A. Yes, sir.

Q. Can you mention one time that you complained 1067
of her loading? A. Not exactly which voyage.

Q. Do you remember the voyage on which you claim to have made over 11 knots down in the Gulf? A. Yes, sir; it was one voyage I made over 11 knots.

Q. Was that when you were very deep loaded? A. Yes, sir; she was one foot by the stern, light.

Q. Can you remember any cargo you had on the vessel when you were employed by the Export Coal Company of Pensacola? A. Yes, sir.

Q. You don't remember the quantity, do you? A. 1068
No, I don't.

Libellant's counsel reads and offers in evidence the letter of W. D. Munson, of October 25/90; it is marked Ex. 85.

Q. How was it that you carried on that trip so much heavier cargo than you have on any of these trips and yet you made good speed? A. Because the cargo was in that nature that I could trim her, and the trim she was built for.

1069 Q. So you could carry out the speed of 11 knots, and 850 tons? A. I don't remember exactly the quantity; I told the mate that she was deep loaded.

Q. But you still made 11 knots? A. We made over 11 knots that time, and the coals were better, too.

Q. When you were taking in fruit at Colon on both of these voyages, did you instruct how to stow it? A. There was no instructions about it; the last time I knew nothing about where to put the cargo because Mr. Henry Wessels was there to place the cargo the
1070 first time I was there; but we had to take a full cargo; there was only room for a certain amount, and we had to fix it in the ship.

Q. Who instructed you? A. I had instructions to take as much as I could get.

Q. You had a full cargo of fruit by instructions? A. Yes, sir.

Q. You could stop that loading at any time? A. Not very well when the fruit was alongside.

Q. Didn't you order how many to cut? A. I or-
1071 dered, but he brought a good quantity; I think 3,000 more than we ordered.

Q. If they brought more than you ordered you weren't obliged to take them? A. I didn't want to send it away.

By the Court:

Q. Where was the coffee taken aboard? A. In Greytown, Nicaragua.

Q. That was before the fruit? A. Yes, sir.

1072 Q. Where was it put? A. It was put in the hold, what we call the third hatch, just before the bridge.

Q. In the lower hold? A. Yes, sir.

Q. Is that the after hatch? A. Yes, sir; the third one.

Q. Which is the further hatch? A. That is No. 4.

Q. The coffee was in No. 3 hatch, was it? A. Yes, sir; down in the hold.

Q. Why didn't you put that farther forward? A. Because I had instructions from Wessels to take all dead weight cargo either in No. 3 hatch or else in No. 4,

right aft in the tunnel hold that runs along with the propeller shaft where no air comes through. 1073

By Mr. Putnam:

Q. You say you did put it forward of the bridge? A. Forward of the bridge; yes, sir.

Q. You didn't take the load line draft yourself, you left that for the mate to do? A. Both mates looked after it; first one and then the other; the chief mate looks after it first and then the second mate verifies it.

Q. But you don't personally take any loaded line? 1074
A. No, sir.

Q. When you loaded on the eighth voyage were you alongside the wharf or where? A. In the stream.

Q. How far from the land? A. About half a cable length hardly.

Q. You furnished these abstracts of logs for your voyages? A. Yes, sir.

Q. Just look at those and see if they are signed by you? A. Well, I signed my name, certainly.

1075

By the Court:

Q. The coffee in the lower hold is a kind of cargo that serves as ballast, isn't it? A. To a certain extent.

Q. You have 200 tons of water ballast away in the forward tanks? A. Yes; way underneath cargo holds; we have a certain system of ballast tanks all along.

Q. What part of the ship was the water ballast on the return trip from Colon? A. I always had to carry the two forward tanks full.

Q. From fore to aft do those tanks come? A. The 1076
first tank was right from forward, and the extension of the second one was just abaft the tank hold; just underneath the bridge.

Q. As far as aft of the bridge? A. Not quite; two-thirds of the vessel.

Q. But the bridge isn't two-thirds of the vessel's length from the stem? A. No; that is only half; a little over half from forward.

Q. What was in the fore part of the vessel, in the fore hold? A. Fruit, bananas.

1077 Q. I don't understand why coffee should be put in the centre holds forward when you were loaded by the stern, if the coffee served as ballast? A. I got orders coming out here; we had 3 separate bulkheads from forward to the bridge; but they wanted the forward bulkhead out, which was done, and then on account of the fruit being bananas which would rot perhaps, and not to get any smell into the coffee, we gave this coffee separate place behind the 3d bulkhead, that was separate again from the other cargo. I got my instruc
1078 tions to do that.

Q. Wasn't there any bulkhead that separated the forward hold? A. It was taken out by Wessels' orders, to have a circulation of air.

MR. PUTNAM: I offer such portions of the abstracts of log as shows the draft, the distance and the quantity of coal.

They are marked respectively Exhibits 70, 69, 68, 67, 66, 65, 64, 63, 62, 61.

1079 By Mr. Putnam:

Q. The abstract of voyage No. 8, marked 69, you have the coal taken on board at New York as 390 tons; I show you the coal bill Wessel's Ex. 10 of that date, which is 380 tons, and ask you if there was not a mistake? A. It is not my mistake; that is the engineer's mistake; I am not supposed to know how much coal is on her, and I put it down according to the engineer's report, and the same thing might happen that some of the figures are wrong; sometimes I am
1080 in a hurry to send ashore, only being ashore sometimes not 24 hours. I swear that, because I am very strict.

Q. Was there any entry in the log about the quantity of coal taken on board? A. Not in my ship log; in the engineer's log.

Q. Is there any entry in any log about the water ballast? A. The engineer's log.

Q. You never saw it? A. I saw it; there is a certain place with a black plate on it and it is recorded there whenever I ask him to fill his tanks it is recorded in his log.

Q. Recorded in his log? A. It had to be. 1081

Q. You mean it ought to be but you won't swear whether it is or not. Will you please produce the engineer's logbook and point out to us where it ought to be? A. It ought to be entered in remarks.

Q. What you say is that it ought to be entered under the head of remarks, but you can't find it? A. No.

Q. You know what is meant by the Beaufort Scale, recording the weather from a dead calm to a high sea? A. We never use that scale.

Q. Haven't you any scale by which you can desig- 1082
nate by a number a difference between calm and heavy seas and storm? A. No; I haven't any scale.

Q. You didn't designate anything of that kind? A. No.

Q. When the vessel came in here on the 16th of May, 1892, you gave the pilotage card showing the draft, did you not? A. Yes, sir.

Q. (Handing witness paper.) That is your signature is it not, dated May 16, 1892? A. I guess so.

Q. And by that the draft of the stern was 16 feet; 1083
is that right? A. 16 feet; but I had orders from the old man—it might be a few feet over he told me.

Libellant's counsel offers the pilotage card which is marked Ex. 82.

Q. Look at the next paper shown you and see if that is not your signature? A. Well, that is 16 feet.

Q. No; I ask you if that is your signature, April 23, 1892? A. It is my signature.

Q. And that states 16 feet? A. Yes, sir. 1084

Libellant's counsel offers the paper which is marked Ex. 80.

Q. Look at this one and see if that is not your signature; July 15, 1891; 15.8? A. yes; that is my signature.

Libellant's counsel offers the paper which is marked 79.

Q. Look at this one also, April 19, 1892, and see if

1085 that is your signature; 16 feet? A. Yes; that is my signature.

Libellant's counsel offers the paper which is marked 81.

Q. In giving the draft to the pilot does he take the draft forward or the draft aft? A. Aft generally.

Q. That is the deepest draft of the ship? A. Well, it is generally.

Q. You know of course that he is paid according to
1086 the draft that the ship has? A. Yes; I know.

Q. I want to ask you about buying this fruit at Colon; were you ordered to buy it at that place; you said that on the 8th voyage you bought the fruit and it was overripe; were you ordered to buy it at Colon? A. According to the letter which I spoke about before, yes, I was.

Q. Weren't you ordered to buy it either at Colon or Bocas? A. Whatever I considered; I could get the fruit at either place.

1087 Q. You intended to buy good fruit, didn't you? A. Oh, yes.

Q. Did you report when you got back here that the fruit was overripe when shipped? A. I did, sir.

Q. To whom? A. To old Mr. Wessels up in the office.

Q. All your conversations that you have referred to were with the old man? A. Either one of them; the father or one of the sons was always there.

Q. Did you report to either Mr. Charles or Mr.
1088 Henry Wessels when you purchased it? A. I reported to them that I had to take them according to the letter I got, and I was sorry I did.

Q. To whom did you report that; which one of these gentlemen here? A. They are so much alike that you can't see much difference.

Q. To which one did you report? A. To one of those two and to the father.

Q. Which one? A. I can't tell you which one.

Q. Can you tell us who was present when you said

it? A. At that time I can't exactly say it because I 1089
was running up there several times a day.

Q. You say you got a letter which you afterwards destroyed, telling you to do something different from the orders you had when you left here; I want to have you state the words of that letter? A. That is impossible; but they said something in it that they didn't think they could get a cargo for the *America* or the *Gurley*, that is the two steamers they had then, and they expected to send both boats down there after me; and the general lines of the letter were the firm was 1090
not to be too strong against the sellers down there as they intended to establish a line there.

Q. That is, to treat the men fairly? A. Well——

Q. Did they tell you in that letter to buy overripe fruit or fruit that was unfit? A. No, sir.

Q. They didn't tell you what kind of fruit to buy, did they? A. No, sir.

Q. They trusted your judgment? A. They trusted my judgment I suppose.

Q. Didn't you take down cash to buy the fruit? A. 1091
Well, I took a little.

Q. About $5,000 cash? A. I don't remember how much it was; but the rest I wrote an order out for I know.

Q. Didn't you report to Mr. Charles T. Wessels, when you got back, that you had rejected a large amount of fruit down there because it was unfit? A. Yes, sir; I reported that to him.

Q. Isn't it the fact that you did reject a large amount of fruit, and the fruit that you took on board was not 1092
the fruit that you first rejected? A. Well, of course I couldn't reject the whole lot, but it was fuller than I expected.

Q. But after you rejected the fruit it didn't come back on board the ship, did it? A. Not the first voyage, no.

Q. The fruit that you rejected, what was the character of that? A. It was turning yellow and black through lying in the sun: some parts were black and some parts were yellow.

1093 Q. That you rejected as unfit? A. As unfit.

Q. The fruit that you took on board wasn't the same as you rejected, was it? A. I wasn't on board the whole time; the mate complained; he said, "This cargo is too full I am afraid to take it to New York;" I said, "If we reject the cargo we have to reject the whole lot."

Q. And you did reject it?

Objected to.

1094 Q. Did you testify, or state, when you were examined in August of last year that the fruit was bad when it was received on the steamer?

Objected to that the testimony will speak for itself. Objection sustained.

Q. Did you state to your counsel that the fruit was bad at any time last year? A. Yes sir, I did.

1095 Libellant's counsel offers in evidence the list of bananas carried by the *Ceres* for Dumois, under the subsequent charter, between April 16 and September 10, 1893. It is marked Ex. 88.

Q. During the time that you were carrying bananas for Dumois did you have any cargo in the square of the hatch? A. Yes, sir; I did.

Q. All the voyages? A. Very near every voyage; not in all the hatches, but in No. 1 and 3; because Dumois liked awfully well to have the bananas down in the square of the hatch.

1096

By the Court:

Q. What difference was there in the loading of those voyages from these from Colon? A. We stowed the cargo different; Dumois didn't like to stow his holds so full; we set the bunches standing up, and for Dumois we had them two high and for Wessels we had 3 sometimes, and Dumois thought the holds were too full with so many.

Q. Did you reckon your miles by the taffrail log running for Dumois? A. Yes, sir.

Q. And not by observation from point to point? A. 1097
Of course if the sun was shining I took my distances out by the sun.

Q. When you give the number of knots made in 24 hours, from noon to noon, did you give it by the taffrail log, as in these exhibits, or by actual measurements of distances on the chart? A. On the taffrail log.

Q. It is a fact that you had a new propeller under this charter, this new charter? A. At the request of the Wessels I put it in when I went the last time. 1098

Q. And you had a new propeller running all the time for Dumois? A. In the last year but not the first voyages this year.

Q. And you had a new engineer? A. I got a different engineer on the complaint of Messrs. Wessels.

Objected to, the charter party saying that if the engineer was not satisfactory he should be removed.

Q. When was it that you changed your engineer in 1099
the year 1892? A. I changed just after I had been in the dry dock.

Q. In the month of May 1892? A. I think it was in the month of May.

Q. You stated that on the voyage No. 8, the first voyage that is in controversy here, that on the 16th of April you did not have moderate weather until after a certain hour; will you just refer to your log and see when that was? A. On the 16th of April, it commenced about 2 o'clock, between 2 and 4 a. m., it 1100
commenced to moderate.

Q. What I want you to state is how much of the 16th was moderate weather and how much was immoderate weather? A. About 18 hours was bad weather.

Q. How many miles did you make on the 16th of April, according to your log? A. Excuse me for saying, down in the log I have put my nautical time, but when I told you about those things I put the day in the land time.

Q. How many miles have you logged for the 16th of

1101 April? A. According to your reckoning I have the 15th and half the 16th——

Q. How many miles did you log on the 16th of April? A. I have made 264 miles I think here according to as it is there.

Q. That is up to noon on that day? A. Up to noon on that day.

Q. How much immoderate weather had you in the 24 hours prior to noon? A. I had about 9 hours bad weather.

1102 Q. How bad was that weather? A. Well, here is standing "a stiff breeze."

Q. High sea? A. It is only standing "a stiff breeze."

Q. Was there any day that you were on the *Ceres* in the 8th voyage or the 9th voyage in which you made as much as 264 miles, besides that; that is, coming from Colon to New York? A. Yes, I think there was.

Q. Isn't it the fact that on the next day, the 17th of
1103 April at noon you had 250 miles log? A. Yes.

Q. And the day before, the 15th of April at noon, you logged 257 miles? A. Yes.

Q. Now which day of those days coming from Colon to New York do you claim was moderate weather? A. It was part moderate on the 16th, as written down there; but according to here it is partly bad weather.

Q. These marks that you put down as distance run, in the abstract of the log for each day are from what time to what time? A. From noon to noon.

1104 Q. But where you have the figure 10, meaning the 10th of April, and the number of miles opposite, what period of time does that cover? A. Noon of the 9th to noon of the 10th.

Q. Was there bad weather between noon of the 9th and noon of the 10th, in May, when you ran 244 miles? A. That is all moderate.

Q. Look at this telegram and see if it was sent by you? A. Yes; I think that includes bunker coals in the ballast.

Libellants' counsel offers the telegram in evi- 1105
dence and it is marked Ex. 45.

Q. Have you got the telegram that this was in answer to? A. No, I haven't got it, but——

Q. Look at that and see if that is not a copy of it? A. I think it was.

Libellants' counsel offers the copy in evidence and it is marked Ex. 44.

THE WITNESS: She can't stand empty, you know; 1106
she can't stand empty, she would capsize empty, that vessel.

Q. You say that you said to one of the Messrs. Wessels that they might cancel the charter party if they wished; when and where did you say that? A. Well, I mentioned it in the office to old Mr. Wessels one time.

Q. Where? A. Well, I can't exactly remember the time, but it was before the four months were over.

Q. Can you mention the time within a month? A. 1107
Well, of course, it was sometimes between; it wasn't the first voyage and it wasn't the second, neither, I don't think; it was either the third or fourth voyage; I can't exactly say.

Q. There were only three voyages before? A. It must have been the third voyage, I remember that way, because I said when they complained, "I am sorry, but if you don't like it you must throw up the charter, because I have done my best now.

Q. Did you ever write that to your owners? A. 1108
No; they wrote to me that the only thing we could do was to try to get a new charter out here.

Q. When was that? A. Well, I can't exactly say that; I haven't got the letters to refer to, either, because I sent the most of them home.

Q. You said that there was a commission paid to somebody on the hire during the two weeks' lay up in Mobile, do you know anything of that of your own knowledge? A. I know because the ship was going to be stopped for Mr. Williams' account.

1109 Q. Didn't Mr. Williams bring a suit? A. No; we paid it without suit.

Q. You paid it? A. Through Mr. Kirlin; I cannot say when, because I left for home.

Q. You left it all for your counsel to attend to? A. Yes, sir.

Q. So you don't know what he was paid, how much? A. No, sir, I don't.

Q. You loaded the ship here last November? A. Yes, sir, I did.

1110 Q. And she sailed from here? A. Yes, sir.

Q. The present month, November, 1893? A. Yes, sir.

Q. Do you know what she drew? A. She drew exactly 17 aft and 15.1 forward; because I had to get the compasses adjusted and the compass adjuster told me to have the vessel as stiff as possible and I filled two tanks.

Q She carried cotton? A. She did; we had pressed cotton, and besides that we had 350 tons of bunker coal

1111 in her.

Re-Direct by Mr. Kirlin:

Q. Was it designed that she should go to sea with that draft that you spoke of? A. No, sir; of course not.

Q. What was the ballast put in for? A. It was to put her very stiff to adjust the compasses, and we were lying about there for three hours; before going down the compass adjuster told me "I suppose your steamer is a stiff boat." "Well, not so very stiff," I said.

1112 "Then you had better try to stiffen her, for there is a strong tide down there and we have to lay sometimes across the tide and we want her as stiff as possible." So we had both tanks full.

Q. As soon as the compass was adjusted what was done with the ballast? A. I told the captain in my place; he objected, but as soon as you leave the pilot then I heard him give orders to the engineer to pump out the forward tank because we expected some bad weather.

Q. Did that let her up? A. That would lift her 9

or 10 inches; there was 100 tons, possibly 92 tons, and 1113
that would lift her 9 or 10 inches.

Q. That would lift her a little above her water-mark? A. Yes; and then I kept one of the tanks full.

Q. What was the quality of the coal that you had while you made those two voyages to Mobile, as compared with that you got in New York. A. They were not so small; they were more shiny and they were a good bit larger.

Q. Did that have anything to do with your making 1114
better speed? A. Yes, sir; of course.

Q. The coal and the trim of the vessel, both? A. Yes.

Q. Where is the third hatch from the engine room? A. Forward of the engine room.

Q. One hatch abaft and that is No. 4? A. Yes, and that is No. 4.

Q. What is the relative size of the new propeller that you put on after the Wessels charter and the old propeller? A. About the same size; but it turned out 1115
that she made a little better speed.

Q. You said that under the Dumois charter you had the same propeller? A. For the fore part of this year.

Q. How many voyages? A. Three voyages till we got to New York again.

By Mr. Putnam:

Q. You put on a new propeller about the 16th or 18th of May, 1892? A. Yes, sir. 1116

Q. How long did you keep that propeller on that you said made her go a little faster? A. I kept it on till I came home with her, and that was shifted again and the other one put on.

Q. When was that? A. I wasn't in her then; I had another steamer running to the Mediterranean.

Q. All the time of the season of 1892 you had the new propeller? A. Yes, sir; for Dumois.

Q. And the first four voyages you had the same propeller? A. Yes, sir, the same old one; but now I have the new one that was put in new.

1117 Q. Do you know what kind of a log it was that you had, a taffrail log? A. It is called Walker's Patent Taffrail Log.

Q. Have you the same log yet that you had with Messrs. Wessels? A. I think it is the same.

Q. Do you know of any change? A. I don't know of any change, no; but the mates might have changed it without my knowledge.

Q. Did you ever have any reason to suspect the log of error? A. No, sir; we tried them both and found
1118 them just the same; we tried by shifting the line and other ways; when there is more sea and choppy and when it is going a certain way, the vessel, of course, it shows more.

Q. She goes around more? A. Yes, sir.

Q. In giving your estimate as to what days were moderate and what were immoderate I notice you said several days immoderate, when the log said "Stiff breeze," what was the condition of the wind and sea as represented by the entry, "stiff breeze?" A. A
1119 stiff breeze I count as not quite a storm, but not moderate weather either; it is commencing to blow then, and the seas are commencing to go over the vessel; the spray goes over the vessel.

Q. That you call immoderate? A. That I call a stiff breeze.

Q. In this telegram, Ex. 45, when you said, "*Ceres* draws over 12 feet empty," what condition were you understanding that to be? A. When I got orders to lay up for a fortnight I got letters from my agent, Mr.
1120 Wigg, about certain freights, and he proposed to me to go on that freight, a round freight down the coast to Colon, or somewhere down there, and freight from Progresso up to New York again, some hemp. I received several telegrams and letters, and then I got a letter from Mr. Wessels saying they were sorry to hear that I had refused Mr. Wigg's offer as we could have settled everything, but that he would look into it and perhaps he would propose the same thing to me; and just after that we got this telegram; certainly I suppose it was the same voyage it referred to.

Q. And for that voyage? A. I suppose they had 1121
to carry a lot of coal and fill the ballast tanks there, and that is the reason I sent that telegram.

ERNEST L. SIMPSON, being duly sworn and examined as a witness for the claimant, testifies:

By Mr. Kirlin:

Q. What is your firm name? A. Simpson, Spence & Young. 1122

Q. How long have you been ship brokers in New York? A. For 20 years.

Q. Do you do extensive chartering business? A. We do.

Q. Do you do active business in certain lines? A. In two regular freight lines.

Q. And for vessels that are not running in lines as well? A. Yes, sir; a great many of them.

Q. Have you made fruit charters? A. We have.

Q. With guarantee clauses for speed? A. Well, 1123
that I couldn't say absolutely.

Q. In a charter of a fruit vessel when the vessel is engaged in the freight trade this clause is found, "owners guarantee steamship to make an average speed under steam of not less than knots per hour, fruit or light laden in moderate weather;" can you from your experience give us any idea as to the meaning of the words "light laden" in that clause? A. Yes, sir; I should say that light laden was certainly not heavier than fruit, and a light cargo such as is 1124
generally known to steamship owners would run from about $\frac{1}{2}$ to $\frac{2}{3}$ of the steamer's dead weight capacity; $\frac{2}{3}$ I should say would be an extreme.

Q. You understand the words "light laden" in that connection to mean no heavier cargo than fruit? A. Undoubtedly.

Q. Assume that the draft with the vessel light in ballast was 11.6 and the deep draft 15.9; how deep would you say she could be loaded as the outside limit

1125 for a light cargo, or to be considered light laden? A. I should say about 13 feet light laden.

Q. There is a margin there of 4.3; how much of that ought to be taken off in your judgment by a cargo that should be considered to make the vessel light laden; what do you say is the outside limit? A. 13 I should think was the outside.

Q. 14 would be a liberal estimate, would it? A. Very liberal.

Q. Are there certain cargoes that are known com-
1126 mercially as li ht cargoes? A. Yes, sir.

Q. Name them? A. Cotton, tobacco; those are about s'andard light cargoes.

Q. How much do they put a vessel down compared with heavy cargoes? A. An ordinary steamer—of course you can only give rough figures—it depends upon the build of your steamer—would take about half her dead weight of cotton to make a full cargo.

Q. Take a vessel whose carrying capacity is 800 tons; how much cargo of cotton or tobacco would
1127 put her down? A. Cotton about $\frac{1}{2}$ and tobacco rather less than a half.

Q. Is there any other cargo known commercially as light cargo which would put her down more than that? A. Well, oats are light cargo, would put her down a little more than that; up to about $\frac{2}{3}$ of her dead weight.

Q. Do you ever remember to have met with this clause of a charter party "fruit or light laden" in a guarantee? A. No.

Q. On what do you base your interpretation that
1128 light laden shouldn't mean any heavier than fruit laden? A. Because I understand the steamer was chartered for fruit, and fruit would naturally be the standard of weight.

Cross-Examined by Mr. Putnam:

Q. Do your firm charter vessels for the banana trade? A. We do.

Q. But you have never chartered any with the speed guarantee? A. I won't absolutely say that we have not.

Q. Most of your fruit trade is with the Mediterran- 1129
ean? A. We charter largely for the Mediterranean.

Q. In order to express a definite opinion about the meaning of the words light laden you would want to know how deep a vessel would be fruit laden? A. Yes, sir.

Q. And if a vessel was fruit laden down to 15 or 15.6 she would be light laden with the same draft, wouldn't she? A. I should think likely; no, I don't know that she would; she might.

Q. Isn't it your idea that light laden is to be eqniva- 1130
lent to fruit laden? A. No, not equivalent; not heavier.

Q. Equivalent is equally? A. Yes, sir.

Q. Your idea is that it should not be heavier than a cargo of fruit? A. Yes; but I don't mean to say that fruit is necessarily a light cargo; I don't consider a banana cargo is an especially light cargo.

Q. But you consider it might be as heavy as some cargoes of cotton and tobacco? A. No; I think they would be found heavier than cotton or tobacco, con- 1131
siderably.

CLAIMANT RESTS.

1132

1133

CAPT. SVENSSON recalled:

By Mr. Kirlin:

On page 210 of the minutes you were asked: "Did you carry anything else besides fruit, as a rule, "while under the Dumois charter? A. No, just "fruit. Q. What speed did you make? A. In "moderate weather eleven and over eleven. Q. "On what draft? A. About 14.3 and less mean, the "whole time." Was that your answer? A. No; I
1134 said 14 mean and less.

Q. On the voyage from Barracoa under the Dumois charter on the 17th of August the draft appears to have been 14.1, and on the voyage from Banes on June 7 the mean draft appears to have been 14.5. Was there anything else but fruit on those two voyages? A. No, sir; we never carried anything else than fruit under the Domois charter

Q. How did the draft come to be heavier than on the others? A. Two or three voyages during the year
1135 the trade winds were stronger than usual, and I suppose it must have been those voyages we filled the after tank for the ship not to dive, to heave in the sea, to keep the propeller down the whole time.

Q. Did you carry them all the way to New York? A. No, sir; we discharged it as soon as we came up to the lee side of the Fortune Islands.

By Mr. Putnam:

Q. You stated yesterday how much coal you took on
1136 this last voyage to Spain; how much cotton did you have? A. I cannot exactly say, but we had I think it was 1,800 bales.

Q. You made a custom house clearance, didn't you? A. Not I; but the brokers did.

It is agreed that the clearance shows 1,800 bales of cotton, 906,208 lbs., equaling 405 tons.

Q. You also had some staves, did you not? A. That was not much.

Q. 3,600 staves, were there not? A. Yes, 3,600.

Q. That would be about how many tons? A. I 1137
can't say exactly.

Q. 10 or 15 I suppose? A. I thought at least when I took them in; when I got them down Mr. Barber said they only amounted to 7 or 8; I don't know exactly.

Q. You don't know yourself? A. That is what he said to me.

Q. Where was this 350 tons of coal stowed that you say she carried to Spain? A. I couldn't say exactly now as to the tons; it might be wrong, as to the coals. 1138
That was stowed just like I generally had it, running on a fruit charter; I had to stow it that way to come up easy.

Q. I am asking you now about the 350 tons that the vessel took when she left here the 9th of November. You say it was stowed the same way as it was when you were carrying fruit? A. Yes, just the same way.

Q. A portion was carried in the bunkers and a portion in the alley way? A. But I hadn't exactly 350; I think something about 300 and a little over; I think 1139
it was nearer 300 than 350.

Q. You stated yesterday 350, didn't you? A. I might; I don't know; when I get my memory right back, it wasn't so much, but it was over 300.

Q. You had cotton in the upper between decks? A. I had, but it lay loose; I only screwed it in the lower holds; I gave strong directions to the stevedore not to screw any cargo at all in the upper deck.

Q. You filled it in, only you didn't put it in with jack screws? A. It wasn't full. 1140

Q. How much more cotton could you have carried? A. I cannot exactly say how much, but we had all our ventilators and all our ropes and there was plenty of room left besides.

Q. You were chartered on a lump sum at that time, were you not? A. Yes.

Q. So you had no object to make any extra freight more than fairly to fill the ship? A. No, sir; but I didn't fill the ship though. I was only going to take that quantity in.

1141 Q. You spoke yesterday about a letter that you received at Colon. Will you look at this and see if this is not the copy of the letter that you spoke of? A. That is a copy of the same letter which I got down there; but there was a few more words written below it which are not in the copy.

The letter is offered in evidence and marked Ex. 56.

Q. Isn't it usual at Honduras to pile up bananas
1142 when they are cut and cover them with palm leaves or other leaves? A. Yes, they have regular houses generally at the mouth of each river, they have a house on piers thatched with palm leaves, and then they put the fruit in the shed.

Q. Can you mention any place where they have those houses? A. Yes, sir; I can, several places.

Q. Do they have them at Colon? A. You spoke of the Honduras coast.

Q. Do you remember after the charter was thrown
1143 up coming to Mr. Wessels' office with a relative of Mr. Beijer, the managing owner, to talk over the matter?

Objected to. Allowed.

A. Yes, sir; I do.

Q. Was there anything said at that time about the load of the vessel or her draft, as a reason for her not making speed?

1144 Objected to as immaterial; the question of draft is a matter of record. Allowed.

A. I don't think I mentioned that on account that I was just going to show Mr. Beijer, the younger brother of my owner—I was asked to show him up to Mr. Wessels' office. I know there was some talk about this refusal of paying the fortnight's hire, and I thought that Messrs. Wessels said——

Q. My question was, was there anything said about the speed of the vessel as being affected by the draft?

Objected to. Allowed.

A. Yes, I did; I spoke about that. I think I spoke 1145
about it too that time, that she was trimmed in such a way that it was impossible to make speed. I believe I did mention it, and if I didn't do it that time, I was there so many times before.

By Mr. Kirlin:

Q. Wasn't the principal object of that conversation in which Mr. Beijer was engaged, the settlement of the two weeks' hire in January? A. Yes, sir, that is what it was for he was up there. 1146

CHARLES T. WESSELS, recalled.

By Mr. Putnam:

Q. On voyage No. 8, how much cash did you give to the Captain to buy bananas with? A. Something over 5,000 sols; the dollars they use there

Q. Silver, isn't it? A. Silver dollars; 5,081 sols I think it was.

Q. Can you state on No. 8 voyage how much of the 1147
cargo was below deck and how much was on deck? A. I can; that is, bananas. I have it approximately.

Q. Will you give those figures? A. On No. 8 voyage there was under the main deck 271½ tons of merchandise, cocoanuts and bananas and 100 tons of coal; a total of 371½ tons under the main deck.

Q. How much was there above? A. In the between-decks there were 45½ tons of bananas and 125 tons of coal, making a total of 170½ tons altogether in the between-decks. 1148

By the Court:

Q. How many bananas below the main deck? A. 133 tons I figure it.

By Mr. Putnam:

Q. Will you give the same for voyage No. 9, the last voyage? A. Under the main deck, merchandise, cocoanut and bananas there were 286 tons; plus 100 tons of coal, 386 tons under the main deck.

Q. Above in the between-decks? A. I should say 58 tons of bananas and 118 tons of coal; a total of 176.

1149 Q. On the arrival of the steamer, on those voyages, there were some bananas that were so far ripe that they wouldn't come out with the stalk, was there not? A. Yes, there was a great many.

Q. Was there a tally kept of those that did not come out with the stalk? A. The proper tally is kept of the bananas that come out.

Q. Is there a count kept of those that come out with the fruit on and those that do not? A. Everything that is green enough to come out so the bananas wont
1150 fall off the stalk, as they are handled by the stevedore, is counted out as a bunch, and is tallied out; the rest which is so ripe that the bananas drop off the stalks, stay in the hold, and the loose bananas that drop off are gathered up in boxes.

Q. Was there an account kept of how many stalks? A. There was an account kept of the bunches that came out. There is a rough stevedore's account of the stalks afterwards, as they are removed to the dumping carts.

1151 Q. You have stated the number of bunches the ship carried on voyage No. 8; that was both sound bunches and stalks? A. That was the number we paid for; that we tallied into the ship.

Q. That is at the loading? A. At Colon.

Q. How many of those came from the vessel full, adhering to the stalk? A. I should have to look at my memorandum; for that trip No. 8 there were 9,018 bunches landed, tallied out; on trip No. 9 there were 14,599 landed.

1152

By the Court:

Q. Those bunches, then from what you have just said, I am to understand were in good order? A. Yes, those that I have given you were green enough so the bananas would not drop off.

Q. These were in merchantable order? A. They were ripe; you understand, they were not green as they should have been; but still they were not so ripe that they dropped off the stalks.

Q. Were they unmerchantable? A. That is a pe-

culiar trade technicality ; to be strictly merchantable 1153
they should be green so as not to rot too quickly in the process of selling. A yellow bunch is fit to eat.

Q. You don't answer my question whether they were merchantable or not when you got them ? A. Yes, they were merchantable.

By Mr. Putnam :

Q. Were there any complaints made by your firm to the Captain about the heavy draft of the ship in respect to pilotage bills ? A. Not that I know of. 1154

Q. Were there any complaints made to you by the Captain at any time as explaining his failure to make speed on account of the draft or the load of the ship ? A. Not until after the charter was over. I think I first struck that in his testimony, on his first examination.

Q. At no time was there a complaint made before suit was brought ? A. No, sir, that I can recollect.

Q. What is the usual practice in banana ports of covering them over with leaves after they are cut ? A. 1155
In the great majority of places the usual practice is to pile the bananas up as we call it on the beach, and then to cover them with the dead leaves of either the plantain or the banana to protect them from the sun and the rain.

Q. There are some ports where they don't have houses ? A. The number of ports where they have houses built for fruit is comparatively small.

Q Looking at Exhibit 56 I will ask you if there was anything more written on the original letter than appears on the copy ? A. Not that I recollect. 1156

Q. Is that taken right out of your press copy book ? A. I cut it out last night.

Q. Did you ever at any time give Captain Svensson any orders how to stow his coal or his fruit or his cargo ? A. No ; I may have given the orders how to stow merchandise outside of the fruit ; but I never gave him orders as to fruit.

Cross-Examined by Mr. Kirlin :

Q. Referring to the number of bunches you say

1157 were landed, according to that half of the bananas were off the stalks on voyage No. 8? A. No.

Q. Didn't you carry 18,000, or was that the 13,000? A. That was the 13,000 voyage.

Q. Have you a record there of the stalks? A. No.

Q. You said the stevedore kept a tally of the stalks? A. Yes, but it is a very rough tally; it is not accurate.

Q. You haven't got that? A. No.

Q. That would be a good check on the other? A. No; as I said, that tally is inaccurate; the men are han-
1158 dling rotten stuff and they won't keep careful tally.

Q. Isn't it a fact that there were more bananas on the between deck, or the main deck as we call it, on the last voyage than on the first voyage? A. I think there were.

Q. The figures I have show 170½ tons of bananas on the main deck on the first voyage and 118 tons on the second voyage? A. On the first voyage I gave you as in the between deck 45½ tons; on the second voyage I gave you 58 tons.

1159 Q. Do you know how many bunches you shipped away on that 8th voyage by railroad? A. I can tell you on the Pennsylvania.

Q. Altogether? A. No, I don't know; I should have to dig it out.

By Mr. Putnam:

Q. How many decks has the *Ceres* got? A. She has the awning deck which corresponds to the promenade deck of a passenger steamer; above that she has a fly-
1160 ing bridge deck which doesn't count; below the awning deck she has the main deck. Under the main deck she has the orlop deck.

Q. Then she has got three decks? A. She has three decks besides the bridge deck.

Q. When you refer to the between decks, what deck do you refer to? A. The deck between the main deck and the awning deck.

Q. That is, to the main deck itself? A. That is on top of the main deck but underneath the awning deck.

By the Court: 1161

Q. What is there between the main deck and the orlop deck? A. It is what we call either the lower between decks or the orlop hold.

Q. When you spoke of being under the main deck, you didn't distinguish whether it was on the orlop deck or in the hold? A. No; I take those two together.

HENRY E. WESSELS, recalled: 1162

By Mr. Putnam:

Q. You said that on the voyage that you were on board it was pleasant weather; what did you mean by that? A. I meant with regard to the sea; I didn't mean with reference to whether the sun shone or not.

Q. There were one or two days it rained? A. I think the first three days from Aspinwall home we had rain; or Colon, rather.

Q. When the ivory nuts were taken on that voyage, 1163
do you know whether they were stowed? A. Stowed in the lower hold aft in the extreme stern.

Q. By whose direction was that? A. Capt. Svensson's.

Objected; the charter party states who was to do the stevedoring.

Q. How many bunches in your judgment will the *Ceres* carry full, the same kind of bananas and stowed the same way they were on the voyage No. 9? A. 1164
Allowing for how much coal?

Q. Give the answer in your own way? A. The *Ceres* with 200 tons of coal will carry 25,000 bunches of bananas standing up.

Q. That is the way they were stowed that voyage? A. Yes. Lying down she would carry 30,000 bunches with the same amount of coal.

Q. I asked you before what you thought the average weight of the fruit was on one voyage--the one you came up, I think, and you said 30 lbs? A. About 30 lbs.

1165 Q. Was there any difference, so far as you saw, in the average weight between the two voyages? A. There might have been a difference of a pound or a pound and a half, but no appreciable difference between the two cargoes; I should say they ran very much alike as to weight.

Cross-Examined by Mr. Kirlin:

Q. Isn't it the fact that the heaviest bunches are usually sold here and not shipped away on the railroad?

1166 A. No, sir, it is not a fact.

Q. Wasn't it the fact with these two cargoes? A. No, sir.

Q. Did you see them both? A. I superintended the entire unloading of that steamer, and I mean to say that just the same average bunches went in railroad cars out of town as were put on the trucks in shore; the fruit being all mixed up in the ship large and small was delivered in that same way, large and small, and went into cars that way, and went into trucks that way.

1167 Q. You sent all green bunches away on the railroad, didn't you? A. I sent any that would carry a reasonable time.

Q. You picked out those that would last the longest? A. No, sir, I did not.

Q. Did you send some that were ripe? A. Some were sent to Newark, and what would carry to Newark might not carry to Harrisburg, Pa.

Q. You shipped most of them on the Pennsylvania Railroad? A. No; as much on one as on the other.

1168 Q. Half went to the Pennsylvania and half to the Lehigh Valley? A. Half of the cargo was delivered in New York and one-half the cargo was delivered——

Q. I am only asking about the railroad cargo? A. None of it was sent any great distance.

Q. How far? A. I should say nothing further than the run of 60 hours at the most.

Q. In picking out the cargo for a run of 60 hours, I suppose you selected that which was in such a condition as to be most merchantable when it arrived? A. Most decidedly.

Q. How much vacant space did you have on this voyage on the *Ceres* when you came up? A. Plenty of vacant space. 1169

Q. Where? A. The main tank; the main tank was $\frac{1}{3}$ full.

Q. I am asking about the between decks? A. The main tank in the bottom was not over $\frac{1}{3}$ full, consequently $\frac{2}{3}$ was empty; there was nothing in the upper between decks back of No. 3 hatch.

Q. That is where the coal is? A. No, sir; the coal takes up part of that room, but it don't take up the whole of it. 1170

The Court:

Q. Nothing was aft of which hatch, you say? A. No. 3; that is the space in the upper between desks back of No. 3 hatch.

Mr. Kirlin:

Q. There was no division between the space abaft of the bulkhead where the coal was separating the place where the coal was not from the place where the coal was, was there? A. There was a lot of empty room between the coal and the bulkhead at the back part of No. 3 hatch 1171

Q. That is in the compartment where the coal was? A. But this bulkhead is a temporary bulkhead that can be shifted forward or aft, so we could have carried more bananas there if we had had them to carry.

Q. Do you know of that bulkhead being shifted at all while the vessel was in your service? A. Yes, sir.

Q. When? A. I can't specify any particular voyage, but I know it was done. 1172

1173

CAPTAIN SVENSSON, recalled:

By Mr. Kirlin:

Q. Was the coal bulkhead shifted at all while you were running under the Wessels charter--the bulkhead which has been referred to by Mr. Wessels just now? A. No, it wasn't shifted; I got orders where to put it up from Wessels; only we would take part of it away when we took the coals in New York to help the steve-
1174 dore who was in here some time ago, to take the coals in, but we replaced it as soon as we could.

Q. In the same place? A. In the same place exactly every voyage.

Q. Was the *Ceres* full of bananas on this voyage when Mr. Wessels came up? A. As full as we could get it, I think.

Q. He referred to a vacant space in the tank? A. As I said before, Messrs. Wessels never liked to carry that tank full, and I suppose it wasn't quite full, but
1175 according to my knowledge afterwards in fruit running I think it was quite full enough.

Q. What was the objection to filling that tank? A. I don't know; they had some objection against it but we never carried it more full than it was that time when we run that vessel for Dumois.

The Court:

Q. Which tank was that? A. No. 3 hatch.

Q. You had no water in that? A. No, sir; never
1176 had; we call it a tank on account of its being built around with iron.

Mr. Kirlin:

Q. Is that the tank that has been referred to as the ice tank? A. That tank is called a tank because it is a regular cargo hold, but it is all lined with iron inside and we use it in the home trade when we go in ice to get the steamer down to the proper draft for breaking ice.

Mr. Putnam: 1177

Q. There was fruit carried in that tank on a good many trips, wasn't there? A. Yes, of course.

Q. It wasn't used for water on this ship? A. No, we never had any water in.

Q. It was used to carry fruit and other merchandise? A. We never had any water out here; that is where we carried the coffee or the cargo, according to Mr. Wessel's orders.

Q. You carried fruit in it for Mr. Wessels, didn't you, under the charter? A. Yes, sir; we did. 1178

Q. It was treated just like any other hold of the ship—cargo put in it when you wanted? A. We carried bananas when we had no other cargo, but when we had other cargo I had directions to take it either there or right aft of No. 4 hatch in the tunnel hole, because there was no ventilator.

Q. You spoke of this bulkhead that was of wood? A. It was a temporary bulkhead of wood.

Q. You took it down when you were putting coal in? A. Part of it, as I said before. 1179

CHARLES T. WESSELS, recalled:

By Mr. Putnam:

Q. I read yesterday Exhibit 85 showing the cargo that the *Ceres* carried on the two trips, which shows the number of feet of pitch pine, tons of coal, etc.; have you computed the weights of the cargo? A. Yes.

Q. Just give the weights of the different cargoes? 1180

Objected to as incompetent.

Q. Do you know the weight of pitch pine? A. I do.

Q. You have been in the steamship business how many years? A. I have been engaged in computing freight for about fifteen years.

Q. Have you computed the weight of pitch pine in this cargo as stated by Mr. Munson? A. I have.

Q. Will you state what it is? A. Pitch pine goes 4,500 lbs. to the thousand, but freight lines take it at

1181 2 tons to the thousand, a difference of 20 lbs. on the thousand.

Q. The other cargo mentioned, have you computed also? A. That is tons of coal

Q. How much is the total number of tons on the first voyage? A. 813 tons.

Q. And the second voyage? A. 855 tons.

Mr. Putnam: I will state that these voyages are referred to in the abstract of the log, Exhibit 67, the first sailing from Mobile Feb. 5th,
1182 the second sailing from Pensacola Feb. 27th.

Q. That is computing according to the quantities specified in Exhibit 85. A. It is.

Libellants Rest.

Mr. Kirlin offers in evidence the charter party dated May 25th, 1892, which is marked Exhibit 1.

1183 Mr. Kirlin also offers in evidence the following letters: Letter from Beijer to Wessels, dated Aug. 21st, 1891, marked Exhibit 5. Letter from Beijer to Wessels, dated Sept. 4th, marked Exhibit 6. Letter from Wessels to Beijer, dated Sept. 5th, marked Exhibit 7. Letter from Beijer to Wessels, dated Jan. 18th, 1892, marked Exhibit 41. Letter from Beijer to Wessels, dated May 6th, 1892, marked Exhibit 57.

1184

Charles T. Wessels, recalled:

By Mr. Putnam:

Q. In Exhibit 5 of the 21st of August, 1891, there is a statement in the letter as follows: "There are some passages in the charter inserted without our authority and against which we protested as soon as the charter came to hand;" did you receive any protest from Messrs. Beijer of that description, or of any description? A. Beijer & Co. never protested to us.

Testimony Closed.

1185

Exhibit No. 1.

TIME CHARTER.

New York Fruit Form.

G. WESSELS & Co.,
New York.

Cable Address:
Wessels,
New York.

Form 3.

1186

THIS CHARTER PARTY, made and concluded in the City of New York, the 25th day of May, 1891, between E. J. Rudgard Wigg & Co., agents for owners of the good Screw Steamship *Ceres*, of Malmo, Sweden, of 873 tons gross register, and 581 tons net register, and 720 tons dead weight capacty exclusive of Bunkers which are of 100 tons capacity ; and of about 63,300 cubic feet clear cargo capacity exclusive of Bunkers ; and to load 720 tons weight of cargo in addition to coal for days consumption at highest speed vessel 1187
can make on feet draft, having engines of 200 nominal horse-power, provided with proper certificates for hull and machinery, and guaranteed to class 100 A1, at Lloyds and G. Wessels & Co., merchants of the City of New York.

WITNESSETH, That the said owners agree to let, and the said Charterers agree to hire the said steamship from the time of delivery at the Port of Livingston, Guatemala, for a period of (4) Four calendar months, she having cleaned bottom before leaving Europe, 1188
to enter upon this Charter. It is agreed that the steamer is to leave Tyne, England, in ballast on or about nor later than 2d June, she being on her delivery at the said Port, ready to receive cargo, and being tight, staunch, strong, and in every way fitted for the service, having all necessary dunnage, water ballast, steam winches and donkey boiler, with capacity to run all the steam winches at the same time. The steamer is to have a full complement of officers, seamen, engineers and firemen for a vessel of her tonnage, and is to be employed in car-

rying lawful merchandise, including petroleum or its products, in cases, (and passengers so far as accommodations will allow, but any expense to suit U. S. passenger inspection to be borne by Owners); between port and ports in Canada and/or other British possessions not north of River St. Lawrence (steamer to leave the St. Lawrence by the 31st of October), and/or the United States of America and/or West Indies and Gulf of Mexico, and/or Carribean Sea, and/or Central America, and/or South America, not south of the River Plate, as the Charterers or their agents shall direct on the following stipulations:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel, also for all engine-room and deck stores, and maintain her in a thoroughly efficient state in hull and machinery for and during this Charter guaranteeing to maintain the boilers in a condition to bear the working pressure allowed the steamer by her certificate (and this pressure to be carried continuously while under steam during the whole term of this charter) and to victual and provide for all passengers in the best manner according to their class, charterers paying at the rate of 4/–sterling per day for each first-class passenger, which rate is to include all service except Liquors and Wines; the vessel is to provide a liberal table.

2. That the Charterers shall pay and provide for all the coal, port charges, pilotages, agencies and commissions, and the Charterers shall accept and pay for all coal in the steamer's bunkers on delivery, at the rate of $4.00 per ton, and the Owners shall, on expiration of this Charter, pay for all coal left in the bunkers at the current market price, but not to exceed $4.00 per ton, at the respective port where she is delivered to them. It is understood that the steamer must have sufficient coal in bunkers on delivery to Charterers of not less than (12) twelve days coal on arrival at Livingston, Guatemala.

3. That the Charterers shall pay for the use of said

vessel (£650) six hundred and fifty pounds sterling, 1193
lump sum, per calendar month commencing from the time the vessel is entered at the Custom House and placed with clear holds at Charterers' disposal, but between 6 A. M. and 6 P. M., and at and after the same rates for any part of a month, hire to continue from the time specified for terminating the Charter until her delivery to Owners (unless lost) at a port in the United States.

4. Payment of said hire to be made in Cash in New York at the rate of $4.83 per £ sterling, half-monthly 1194
in advance, at beginning of each half month, from the date of delivery of steamer, and in default of such payment, after three days have elapsed without such payment having been made, the Owners shall have the faculty of withdrawing the said steamer from the service of the Charterers without prejudice to any claim they, the Owners, may otherwise have on Charterers in pursuance of this Charter; cash for ship's necessary disbursements, if desired by master, but not exceeding £250 monthly, to be supplied by Charterers to the 1195
captain at current rate of exchange, subject to a commission of 2½ per cent., plus actual insurance, to cover all charges and captain's receipt or other evidence of payment is to be taken as part payment of the freight.

5. That should the steamer be on her voyage towards the port of return delivery at the time a payment of hire comes due, said payment shall be made for such a length of time as Owners' agents and Charterers, or their agents, may agree upon as the estimated time necessary to complete the voyage, and when the 1196
steamer is delivered to Owners' agent, any difference shall be refunded by steamer or paid by Charterers, as the case may require.

6. That the cargo or cargoes shall be laden and/or discharged with the assistance of the steamer's crew and tackle, in any dock or at any wharf or place that the Charterers or their agents may direct, provided the steamer can always safely lie afloat at all times of tide.

7. That the whole reach of the steamer's holds, decks and all places of loading and passenger accom-

modation of the steamer, (not being more than she can reasonably carry and stow), shall be at the Charterers' disposal, reserving only proper and sufficient space for the ship's officers, crew, tackle, provisions, and stores.

8. That the captain shall prosecute his voyages with the utmost dispatch, and take every advantage of wind by using the sails with a view to economize fuel, and shall render all possible assistance with ship's crew and boats.

9. That the captain, although appointed by the owners, shall be under the orders and direction of the Charterers as regards employment, agency or other arrangements; and the Charterers hereby agree to indemnify the Owners from all consequences or liabilities that may arise from the captain signing Bills of Lading or otherwise complying with their orders and directions.

10. That if the Charterers or their agents shall have reason to be dissatisfied with the conduct of the captain, officers or engineers, they shall make such complaint in writing to an agent in New York to be specially appointed by Owners, who shall have full power to act on their behalf, and, if necessary, dismiss any of the officers should he find the complaints made by Charterers are justified.

11. That the Charterers shall have permission to appoint a Super-cargo who shall accompany this steamer and be furnished free of charge with first-class accommodations, and to see that the voyages are prosecuted with the utmost dispatch; the officers and crew to follow his directions and instructions in putting on and taking off hatches, turning steam on heating pipes, ventilation, etc., the victualling of the Super-cargo to be paid for by the Charterers at the rate of (4/) four shillings per day.

12. That the master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct log of the voyage or voyages, which are always to be open to insvection of the Charterers or their agents, and an abstract of which shall be handed Charterers on each arrival in

New York. Captain is to report at Charterers' office 1201
or agency each day while in port as often as requested.

13. That the Charterers shall have the option of continuing this Charter for a further period of (12) twelve Calendar months,.....

....

on giving notice thereof to the owners or their agents (30) thirty days previous to the expiration of such named term. Charterers having the option to cancel this Charter Party during the extended period upon giving (30) thirty days notice to the owners or their 1202
agents.

14. That in the event of loss of time from deficiency of men or stores, break down of machinery or damage preventing the working of the steamer at sea, the payment of hire shall cease and steamer shall be considered as temporarily off this Charter from time of such occurrence until she is again in an efficient state to resume her service, at the place where such occurrence happened and all coals and other property of the Charterers, or freight, used or destroyed and all expenses 1203
incurred during such time are to be paid for by the steamer and owners; but should the vessel be driven into port or to anchorage by stress of weather or from any accident to the cargo, such detention or loss of time shall be at the Charterers' risk and expense; also if any loss of time from crew or stores not being on board in time, or from repairs to hull and machinery, which are for Owners' account, not being complete at hour of sailing fixed by Charterers, and notice thereof having been given to captain or ship's agents, the time 1204
lost is for steamer's account.

15. That should the vessel be lost, wrecked, &c., any hire paid in advance and not earned (reckoning from the date of her loss) shall be returned to the Charterers with interest from the date of loss by the Steamer's New York Agents within 15 days from application therefor. If date of loss be unknown at end of 30 days it is to be assumed to be five days from time vessel last left port. The Act of God, the King's Enemies, Fire, Restraints of Princes, Rulers and People, and all other Dangers

and accidents of the seas, rivers, machinery, boilers, and steam navigation throughout this Charter Party always excepted.

16. That should any dispute arise between Owners and Charterers, the matters in dispute shall be referred to three persons in New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of Court. One arbitrator may act in place of these three, if mutually agreed upon.

17. That the Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, and the Charterers shall have a lien upon the ship for all moneys paid in advance and not earned, and for any other claims arising under the Charter Party.

18. Ship's bottom to be kept properly cleaned and painted, and steamer to be docked whenever Captain and Charterers may think it necessary; but at least once in every four months. And payment of the hire to be suspended until she is again in proper state for the service.

19. 2½ per cent. addressed commission payable to Charterers.

20. Steamer to work night and day if required by Charterers, and all steam winches to be at Charterers' disposal during loading and discharging. Steamer to provide men to work winches both day and night as required, Charterers agreeing to pay for any night work incurred. Steamer is to enter and leave Ports at night, if pilot on board decides it to be safe.

21. That the steamer be provided with cotton duck awnings (sufficiently heavy to shed rain) throughout, during the whole of this Charter, also with 24 inch diameter wind sails for each hatch, besides stationary ventilators placed throughout the deck as Charterers may direct.

22. That the steamer shall be provided either with loose planks, 2 to 2½ inches thick, to make a platform

or deck, all through the vessel's holds with beams for 1209
such temporary platform or deck to rest on, building the same strong enough to hold tiers of fruit, or a regular fruit deck to be subject to approval of Charterers.

23. That the crew is not allowed under any circumstances to carry bananas or other merchandise for their own account. Donkey boiler not to be worked when carrying bananas.

24. That should the steamer have an iron deck, the Owners shall have the same sheathed all over with 2½ inch planks, before entering on this Charter or 1210
otherwise Charterers to do it at Owners' expense.

25. That in the event of cholera becoming epidemic in the U. S. Atlantic ports, Charterers to have option of cancelling this Charter Party on giving Owners or Agents fifteen (15) days' notice of such intention.

26. This steamer is not allowed to stop to pick up any wreck or in any way assist, or tow any vessel, except in order to save human life.

27. In case any casualty to the steamer disables her from carrying out this Charter for thirty days, Chart- 1211
erers have the option of cancelling this Charter.

28. Steamer is to lay up for overhauling two weeks each year (in winter at time Charterers designate).

29. Steamer is to be kept painted the line colors of Charterers' Line (Buff Funnel and Ventilators and Lead Color Hull).

30. Steam pipes sufficient to keep hold heated in Winter to be placed around Holds and tween Decks as Charterers may wish. Any extra steam pipes beyond what the vessel run has to be fitted at the expense of 1212
the Charterers, it being understood that the tween decks are now fitted.

31. Charterers have right to sublet this vessel or assign this Charter to responsible parties.

32. If this vessel is not delivered to Charterers' Agents at the Port of Livingston, Guatemala, in readiness to load on or before the fifth day of July, 1891, Charterers have the option of cancelling this Charter.

33. Any writings attached to or forming part of this

Charter Party are to supersede any conflicting printed matter.

34. That a commission of 5 per cent. upon the gross amount of this Charter, and usual freight brokerage, payable by steamship and Owners, is due to R. Williams, Jr., upon signing hereof, steamship lost or not lost. And also upon any continuation or extension of this Charter or on sale of vessel.

35. It is agreed that the penalty for non-performance or violation of this contract is to be the estimated amount of damages.

On receipt of advice of delivery of the steamer at Livingston, Guatemala, the Charterers agree to pay in advance (1) one month's hire, the balance of hire to be paid as provided for in the Charter Party.

The owners guarantee the steamer to make an average speed under steam of not less than (11) eleven knots per hour. Fruit or light laden in moderate weather and with good American coal.

(Signed) E. J. Rudgard, Wigg & Co.,
By Cable Authority.

(Signed) G. Wessels & Co.,
25th May, 1891.

Witness to the signature of the Agents for Owners,
(Sigd) R. Williams, Jr.

Witness to the signature of the Charterers,
(Sigd) R. Williams, Jr.

We certify the above to be a true copy of the original Charter Party in our possession.

1217

Exhibit 2.

G. Wessels & Co.,
67 & 69 Front St.,
New York.

Cable Address:
Wessels, New York.

West India Agents
E. J. Wessels & Co.,
St. Ann's Bay,
Jamaica.

Cable Address:
Wessels, Jamaica.

TIME CHARTER, 1218

New York Fruit Form.

Form 3.

This Charter Party, made and concluded in the City of New York the 30th day of November, 1891, between G. Wessels & Co., Charterers of the good Screw Steamship *Ceres*, of Malmo, Sweden, of 873 tons gross register, and 581 tons net register, and 720 tons dead weight capacity exclusive of Bunkers, which are of 110 tons capacity; and of about 60,000 cubic 1219 feet clear cargo capacity exclusive of Bunkers; and to load 720 tons weight of cargo in addition to coal for days' consumption at highest speed vessel can make, on feet draft; having engines of 200 nominal horse-power, provided with proper certificates for hull and machinery, and guaranteed to class 100 A1 at Lloyds, Geo. O. Vanderbilt, Merchant, Princeton, N. J.

Witnesseth, That the said agree to let, and the said Sub-Charterer agree to hire the said 1220 steamship, from the time of delivery at the Port of New York, U. S. A., for a period of about three calendar months, until about the first day of March, 1891, she having cleaned bottom before leaving Europe, to enter upon this Charter. It is agreed that the steamer is to leave New York, U. S. A., she being on her delivery at the said Port, ready to receive cargo, and being tight, staunch, strong and in every way fitted for the service, having all necessary dunnage, water ballast, steam winches and donkey

boiler with capacity to run all the steam winches at the same time. The steamer is to have a full complement of officers, seamen, engineers and firemen for a vessel of her tonnage and is to be employed in carrying lawful merchandise, including petroleum or its products, in cases, (and passengers so far as accommodations will allow, but any expense to suit U. S. passenger inspection to be borne by Charterers) ; between port and ports in Canada and/or other British possessions not north of River St. Lawrence (steamer to leave the St. Lawrence by the 31st of October,) and/or the United States of America and/or West Indies and Gulf of Mexico and/or Carribean Sea, and/or Central America, and/or South America, not south of the River Plate, as the Sub-Charterer or his agents shall direct on the following stipulations :

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of Captain, Officers, Engineers, Firemen and Crew ; shall pay for the insurance of the vessel, also for all engine-room and deck stores, and maintain her in a thoroughly efficient state in hull and machinery for and during this Charter, guaranteeing to maintain the boilers in a condition to bear the working pressure allowed the steamer by her certificate (and this pressure is to be carried continuously while under steam during the whole term of this charter), and to victual and provide for all passengers in the best manner according to their class, Sub-Charterer paying at the rate of one dollar U. S. C. per day for each first-class passenger, which rate is to include all service except Liquors and Wines ; the vessel is to provide a liberal table.

2. That the Sub-Charterer shall pay and provide for all the coal, port charges, pilotages, agencies and commissions, and the Sub-Charterer shall accept and pay for all coal in the steamer's bunkers on delivery, at the rate not exceeding of $4.00 per ton, and the Charterers shall, on expiration of this Charter, pay for all coal left in the bunkers at the same price at the respective port where she is delivered to them.

3. That the Charterers shall pay for the use of said 1225
vessel ($3,250^{00}$) Three thousand two hundred & fifty dollars U. S. C. lump sum per calendar month, commencing from the time the vessel is entered at the Custom House and placed with clear holds at Sub-Charterer's disposal, but between 6 A. M. and 6 P. M. and at and after the same rates for any part of a month, hire to continue from the time specified for terminating the Charter until her delivery to Charterers (unless lost) at New York.

4. Payment of said hire to be made in Cash in New 1226
York half-monthly in advance at beginning of each half month from the date of delivery of steamer, and in default of such payment after three days have elapsed without such payment having been made the Charterers shall have the faculty of withdrawing the said steamer from the service of the Sub-Charterer without prejudice to any claim they, the Charterers, may otherwise have on Sub-Charterer in pursuance of this Charter; cash for ship's necessary disbursements, if desired by master, but not exceeding $1000 U. S. C. 1227
monthly, to be supplied by Sub-Charterer to the captain, subject to a commission of $2\frac{1}{2}$ per cent. plus actual Insurance to cover all charges, and captain's receipt or other evidence of payment is to be taken as part payment of the freight.

5. That should the steamer be on her voyage towards the port of return delivery at the time a payment of hire comes due, said payment shall be made for such a length of time as Charterers' agents and Sub-Charterer or his agents may agree upon as the estimated time 1228
necessary to complete the voyage, and when the steamer is delivered to Charterers any difference shall be refunded by steamer or paid by Sub-Charterer, as the case may require.

6. That the cargo or cargoes shall be laden $\frac{\text{and}}{\text{or}}$ discharged with the assistance of the steamer's crew and tackle, in any dock or at any wharf or place that the Sub-Charterer or his agents may direct, provided the steamer can always safely lie afloat at all times of tide.

1229 7. That the whole reach of the steamer's holds, decks and all places of loading and passenger accommodation of the steamer (not being more than she can reasonably carry and stow), shall be at the Sub-Charterer's disposal, reserving only proper and sufficient space for the ship's officers, crew, tackle, provisions and stores.

8. That the Captain shall prosecute his voyages with the utmost dispatch, and take every advantage of wind by using the sails with a view to economize fuel,
1230 and shall render all possible assistance with ship's crew and boats.

9. That the Captain, although appointed by the Charterers, shall be under the orders and direction of the Sub-Charterer as regards employment, agency or other arrangements; and the Sub-Charterer hereby agrees to idemnify the Charterers from all consequences or liabilities that may arise from the captain signing Bills of Lading, or otherwise complying with their orders and directions.

1231 10. That if the Sub-Charterer or his agents shall have reason to be dissatisfied with the conduct of the captain, officers or engineers, they shall make such complaint in writing to , who and if necessary dismiss any of the officers should they find the complaints made by Sub-Charterer are justified.

11. That the Sub-Charterer shall have permission to appoint a Super-cargo who shall accompany this steamer and be furnished free of charge with first-
1232 class accommodations, and to see that the voyages are prosecuted with the utmost dispatch; the officers and crew to follow his directions and instructions in putting on and taking off hatches, turning steam on heating pipes, ventilation, etc. Victualling of Super cargo to be paid for by Sub-Charterer at the rate of one dollar ($1.00) U. S. C. per day.

12. That the master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct log of the voyage or voyages which are always to be open to in-

spection of the Sub-Charterer or their agents, and an abstract of which shall be handed Sub-Charterer on each arrival each voyage. Captain is to report at Sub-Charterer's office or agency each day while in port as often as requested. 1233

13.

14. That in the event of loss of time from deficiency of men or stores, break down of machinery or damage preventing the working of the steamer at sea, the payment of hire shall cease and steamer shall be considered as temporarily off this Charter from time of such occurrence until she is again in an efficient state to resume her service, at the place where such occurrence happened, and all coals and other property of the Sub-Charterer, or freight, used or destroyed and all expenses incurred during such time are to be paid for by the steamer and owners; but should the vessel be driven into port or to anchorage by stress of weather or from any accident to the cargo, such detention or loss of time shall be at the Sub-Charterer's risk and expense; also, if any loss of time from crew or stores not being on board in time, or from repairs to hull and machinery, which are for charterers' account, not being complete at hour of sailing fixed by Sub-Charterer, and notice thereof having been given to captain or charterers, the time lost is for steamer's account. 1234 1235

15. That should the vessel be lost, wrecked, &c., any hire paid in advance and not earned (reckoning from the date of her loss) shall be returned to the Charterers with interest from date of loss by the Charterers within fifteen days from application therefor. If date of loss be unknown at end of thirty days it is to be assumed to be five days from time vessel has last left port. The Act of God, the King's Enemies, Fire, Restraints of Princes, Rulers and People, and all other Dangers and accidents of the seas, rivers, machinery, boilers, and steam navigation throughout this Charter Party always excepted. 1236

16. That should any dispute arise between Charterers and Sub-Charterers, the matters in dispute shall be referred to three persons in New York, one to be ap-

pointed by each of the parties hereto and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of Court. One arbitrator may act in place of these three, if mutually agreed upon.

17. That the Charterers shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, and the Sub-Charterer shall have a lien upon the ship for all moneys paid in advance and not earned, and for any other claims arising under the Charter Party.

18. Ship's bottom to be kept properly cleaned and painted, and steamer to be docked whenever Captain and Sub-Charterer may think it necessary, but at least once in every four months. And payment of the hire to be suspended until she is again in proper state for the service.

19.

20. Steamer to work night and day if required by Sub-Charterer, and all steam winches to be at Sub-Charterer disposal during loading and discharging. Steamer to provide men to work winches both day and night as required, Sub Charterers agreeing to pay for any night work incurred. Steamer is to enter and leave Ports at night, if pilot on board decides it to be safe.

21. That the steamer be provided with cotton duck awnings (sufficiently heavy to shed rain) throughout, during the whole of this Charter, also with 24-inch diameter wind sails for each hatch, besides stationary ventilators placed throughout the deck as Sub-Charterer may direct.

22. That the steamer shall be provided either with loose planks, 2 to 2½ inches thick, to make a platform or deck all through the vessel's holds with beams for such temporary platform or deck to rest on, building the same strong enough to hold tiers of fruit, or a regular fruit deck to be subject to approval of Sub-Charterer.

23. That the crew is not allowed under any circum-

stances, to carry Bananas or other merchandise for 1241
their own account. Donkey boiler not to be worked when carrying Bananas.

24. That should the steamer have an iron deck, the Charterers shall have the same sheathed all over with 2½ inch planks before entering on this Charter, or otherwise Sub-Charterer to do it at Charterers' expense.

25. That in the event of cholera becoming epidemic in the U. S. Atlantic ports, Charterers to have option of cancelling this Charter-Party on giving Charterers 1242
or agents fifteen [15] days' notice of such intention.

26. This steamer is not allowed to stop to pick up any wreck or in any way assist, or tow any vessel, except in order to save human life.

27. In case any casualty to the steamer disables her from carrying out this Charter for thirty days, Sub-Charterer has the option of cancelling this Charter.

28.

29. Steamer is to be kept painted the line colors of Sub-Charterer Line (Buff Funnel and Ventilators and 1243
Lead Color Hull).

30. Steam pipes sufficient to keep hold heated in Winter to be placed around Holds and tween Decks as Sub-Charterer may wish.

31.

32. If this vessel is not delivered to Sub-Charterer's Agents at the Port of New York, in readiness to load on or before the tenth day of December, 1891, Sub-Charterer has the option of cancelling this Charter.

33. Any writings attached to or forming part of this 1244
Charter Party are to supersede any conflicting printed matter.

34. That a commission of five per cent. upon the gross amount of this Charter, and usual freight brokerage, payable by steamship and Charterers, is due to upon signing hereof, steamship lost or not lost. And also upon any continuation or extension of this Charter or on sale of vessel.

1245 35. It is agreed that the penalty for non-performance or violation of this contract is to be the estimated amount of damages.

G. Wessels & Co.

Witness to the signature of the Charterers,
R. Williams, Jr.

Geo. O. Vanderbilt.

Witness to the signature of the Sub-Charterer,
1246 G. R. Burrows.

We certify the above to be a true copy of the original Charter Party in our possession.

Brokers.

Exhibit 3.

1247

August 7th, 1891.

Messrs. G. & L. Beijer, Malmo, Sweden :

Gentlemen :

We have and note yours of the 21st ulto.

As requested therein we have paid to Messrs. Drexel, Morgan & Co., $1,491.25, say £325 less address commission and a further commission of 2½ % for the broker, without prejudice to our rights in the matter.

While we have every desire to oblige you in the
1248 manner of payments we must call to your attention the fact that the method you wish is quite impracticable ; this time your money had to lie idle while your bankers cabled over as to what amount they should take.

There are often questions arising as to deductions from hire, for time lost in dry docking, for painting, repairs, and in other ways which must be settled here by an agent on the spot ; it is not pleasant to discuss these matters with the Captains and it is an invariable rule that these matters are attended to by an agent here.

We must ask you to appoint an agent as called for 1249
in pars. 10 and 15 of the charter party and you will note that clause No. 15 makes it necessary that he should be financially satisfactory to us: will you kindly notify us as to this appointment at once. In case you desire to change the present agents of the ship (Messrs. Wigg & Co.) the broker named in the charter, Mr. R. Williams, will be satisfactory to us.

The 2½% brokerage we have retained we have turned over to Mr. Williams, he having sanctioned our retaining that amount, instead of 5%, from the payment 1250
made you.

We enclose for your reading a letter from Messrs. Wigg & Co.: in regard to this matter we wish to say that as soon as we received advices of the delivery to us of the S.S., the charter was paid: these came here by the steamer hence the seeming delay that they write to us about: there was no lack of diligence on their part in this matter.

We regret to say that from the advices we have received as to the outward trip of the *Ceres* from here she 1251
is not doing over 10 knots per hour: we shall write more fully on this, if necessary, as soon as she returns here.

There was some two days time lost here when vessel was last here while she was fitting up for the U. S. inspection and there may be a trifle more on her next arrival: these amounts we shall deduct from next payment of hire. Hence it will be necessary, if you wish the amount paid to Messrs. Drexel, Morgan & Co. to inform them as to receiving the hire less our deduc- 1252
tion.

Without further for to-day, We are, Gentlemen,

Yours very truly,

(Signed) G. Wessels & Co.

1253

Exhibit No. 4.

August 14th, 1891.

Messrs. G. & L. Beijer,
Malmo, Sweden.

Gentlemen—

We have to own receipt of your favor of the 29th ultimo.

Enclosed therein we find a copy of a letter written
1254 by some firm of brokers in England with whom we have had no dealings at all. As you enclose us the letter, we must assume that it, to a certain extent, represents your ideas: we should regret to think, however, that you were willing to write a letter which is as conspicuous for its ignorance of the facts as it is for its offensive tone. We must request you in future, not to send us any such communications.

As to the charter of the *Ceres*: the charter party which was in your Captain's possession before the ves-
1255 sel left England and which should have reached you by that time, is very clear. It provides that as soon as we received advices of the delivery of the steamer at Livingston we should pay first months hire. As the vessel herself brought the advices and arrived here July 15 and we paid the hire on the 13th we really paid the money 2 days before it was due.

The Coal money has been paid, part to the Captain and part ($500) on July 17th to Wigg & Co. who turned it over to the Captain at the time: hence, we
1256 cannot well pay it to Messrs. Drexel & Co.

We note that you request us to pay the hire, hereafter, to Messrs. Drexel: we wrote fully on this point in our last letter and in the meantime shall be pleased to do as you request.

Lost time: in our last, we wrote you that the ship had lost 2 days here last time: this the Captain asked us to remit and as he has been very obliging, we did so: the vessel lost this time 3 days which we settled with the Captain for 2 days and which time we deducted in paying balance of the Coal bills.

We note your remarks as to what you wanted in 1257
the charter: this however is not at all to the point anymore than if you should ask us to pay the price you originally asked for the boat: the Charter party is clear: we have carried out its provisions and been very lrberal to the boat, besides: we have lent the Captain awnings and ventilators to the value of $200 —which we could have required him to put in: we carry out agreements in good faith and do not care to receive letters implying that we do not do so.

On the other hand we cannot say that we are satis- 1258
fled with the way you have carried out your side of the Charter: on inspection here, the furnaces were found cracked and the patches were ordered removed and proper ones put on and if a boats' boilers are in such condition that they cannot pass our easy passenger inspection they certainly are not fit to send out on a charter that contemplates running the boat for 16 months. The boat has not yet made the 11 knots you guaranteed although we were informed by the brokers acting for you, that she had gone 13 knots: 1259
we find that, altho we expressly cabled over that all bulkheads except that of the main tank, must be removed, it has not been done and one cargo of fruit was carried with the holds so choked up.

We have every desire to oblige you but if your brokers have disobeyed your instructions and have signed a different charter from the one you wished, your fault-finding must be done with them. It will be quite time enough to write us when we fail to carry out the provision of the charter-party. 1260

We beg to call your attention to part of our last letter to you calling attention to the necessity for appointing an agent here: this should be done speedily.

We return you the letter you enclose us.

Without further for to-day, we remain, gentlemen,

Yours very truly,

(Signed) G. Wessels & Co.

1261

Exhibit 5.

MALMO, the 21st August, 1891.

Messrs. G. WESSELS & Co.,
67 & 69 Front Street,
New York.

DEAR SIRS:

In accordance with the wish expressed in yours of 7th inst. we write by to-day's mail to Messrs. Rudgard, Wigg & Co., asking them to act as our agents re
1262 *Ceres*.

There are some passages in the charter inserted without our authority and against which we protested as soon as the charter came to hand; for event, loss arising through these we would have to make some one responsible, but we trust that you by taking into consideration that the charter is a favorable one to you will not insist on what may be your right in some cases, just as we have ordered Captain Svensson to meet you on all reasonable points. By so doing we
1263 may another year see our connection extended, we having two sister boats of the *Ceres*, which no doubt suit your trade very well.

We remain, dear sirs,

Yours faithfully,
G. & L. BEIJER,
S. J. TRANCHELL,

1264 (Copy.)

Exhibit 6.

MALMO, 4th September 1891.

Messrs. G. WESSELS & Co.,
218 & 220 Washington Street,
New York.

DEAR SIRS:

Since writing you on the 21st we have your favor of 6th and 14th ult.

Having appointed Messrs. Rudgard, Wigg & Co. our agents we do not wish to interfere with the details,

trusting that you will assist in keeping matters smooth 1265
and pleasant. This only we wish to say: that we have a different opinion to you as to what is the bearing of the expression "average speed" and that *Ceres*' boilers and furnaces were in perfect order and we will prove this by Lloyds surveyor's certificate. The extra pieces put on under his own supervision in such places where the pressure is greatest, screwed on in order to permit them to be removed and he says that the alterations made in New York show a deplorable error of judgment. 1266

We are sorry if there was anything in Messrs. Rudgard, Wigg & Co. letter offensive to you; we are however sure that they never intended anything of the kind.

We remain, dear sirs,

Yours truly,

G. & L. Beijer.

1267

Exhibit 7.

G. Wessels & Co.
New York.
218 & 220 Washington St.

September 5th, 1891.

Messrs. G. & L. Beijer,
Malmo, Sweden.

Gentlemen:

We are in receipt of your favor of the 21st August 1268
and note the contents. We have also received word from Messrs. Rudgard, Wigg & Co. that they had received instructions to act as agents for you in the matter of the *Ceres*. We can only add to what we have already written you that we are unaware of what you intended to have put in the charter-party of the steamer *Ceres*, but you can expect that we will carry out our obligation under it in good faith, and shall expect you to have the same done as far as it relates to your side of it. We need only add that at present

1269 there are more steamers built especially for the fruit business in this market offering for charter, than there are parties willing to take them, at much less than your boat. We would not to-day pay you as much for the *Ceres* as we are, as we could replace her with triple-expansion boats for less money and less consumption of coal and loss of bunker room. We paid, for your account, the hire for the present ½ month to Messrs. Drexel, Morgan & Co. on the 2d inst.

Yours truly,

1270 G. Wessels & Co.

Exhibit 8.

New York, Sept. 21st, 1891.

Messrs. G. & L. Beijer,
Malmo, Sweden.

Dear Sirs:

Yours of the 4th inst. to hand, and we note you
1271 have given the *Ceres* agency to Wigg & Co. We should have preferred the other party as W. & Co. are of both little benefit to the vessel or Captain.

Hire. You do not mention to whom we shall pay the same in future; so far we have paid Drexel, Morgan & Co. and although Wigg & Co. sent us bill for the same on the 17th inst. we declined to pay preferring to pay it over to Drexel, Morgan & Co. Please instruct us to whom to pay.

Speed. The *Ceres* is not making the guaranteed
1272 speed and is liable to damage for same to us: we must ask you to remedy same.

Vesta. Sister ship of *Ceres:* what is the lowest price for her (on *Ceres* form of charter) say from March 1st, 1892, for 4 months privilege of renewal of 12 months more; we wish to work this business through R. Williams direct and not through London so that there will not be any misunderstanding again. Give us full particulars with plan of ship and we will see if we can make it work. In the meantime we remain,

Yours truly,

(Signed) G. Wessels & Co.

1273

Exhibit 9.

October 2nd, 1891.

Messrs. E. J. R. Wigg & Co.,
City.

Dear Sirs:

We give you formal notice that we will continue to keep the S. S. *Ceres* running after the 2nd November, in accordance with the terms of our charter of said steamer until further notice.

1274

Yours truly,
G. Wessels & Co.

Exhibit 10.

New York, November 4th, '91.

Messrs. E. J. R. Wigg & Co.,
Agent for Owners S. S. *Ceres*.

Dear Sirs:

On Sept. 21st we advised Messrs. Beijer that the *Ceres* was not making the guaranteed speed, and asked them to have the defect remedied; our object in so doing was to avoid unpleasant relations with those parties. It appears that no improvement has been made and the Engineer of the ship reports that he can not get sufficient steam with American coals; we are furnishing her with the "Pocahontas" coal which you know is the best of any obtainable in this country. Inasmuch as the ship is not up to the speed guaranteed by the charter-party, we give you notice that we shall turn her over to you on the expiration of the present trip.

1275

1276

Yours truly,
(Signed) G. Wessels & Co.

1277

Exhibit 11.

E. J. Rudgard Wigg & Co.,
Forwarding Agents,
Ship and Freight Brokers,
24 Beaver Street.

New York, 5th November, 1891.

Messrs. G. Wessels & Co.,
New York.

Dear Sirs:

1278 Referring to your letter of yesterday's date and in the absence of copy of any letter you may have written the owners of S. S. *Ceres*, and in addition the absence of any formal protest from you to either ourselves or the captain of the steamer that she was not making the speed called for we beg to give you notice that in conformity with Clause 13 in the charter party we cannot accept delivery of the steamer as you propose, but shall require the 30 days' notice provided for in said charter party.

1279 Yours truly,
E. J. Rudgard Wigg & Co., Agents.

Exhibit 12.

November 5th, 1891.

Messrs. E. J. R. Wigg & Co.,
24 Beaver St., City.

Dear Sirs:

1280 We are just in receipt of your favor of this date, and in reply state as follows:

Our letter of the 21st Sept. being addressed to the owners of the steamer, covers all matter of protest, as, being sent to the principals, it does away with the necessity of our protesting to you or the Captain. We will show you the press copy of the letter if you will call for that purpose.

We do not wish to reject the ship, but have been obliged to do so as we find that protests do not improve the speed deficiency.

If you will undertake on behalf of the owners to 1281
have the defect remedied, and assure us of your readiness to do so to-day, we will withdraw our letter sent you yesterday; but in any event we can not coincide with your ideas of the 30 days' notice being required, in the event of the ship failing to come up to the requirements of the charter.

Yours truly,
G. Wessels & Co.

1282

Exhibit 13.

Letter head E. J. Rudgard Wigg & Co.

New York, 5th November, 1891.

Messrs. G. Wessels & Co.,
New York.

Dear Sirs:

In reply to your favor of even date, and referring to our conversation this afternoon, we shall go thoroughly into the matter in question immediately on arrival of S. S. *Ceres* and endeavor to rectify any faults that are 1283
not in accordance with the charter party and if we find that the vessel is not making the speed provided for shall use our best efforts to place her in such condition that will be satisfactory to your good selves.

We are communicating with the owners and request you, in the meantime, to withdraw your letter of yesterday's date in accordance with our agreement.

Yours truly,
E. J. Rudgard Wigg & Co.,
Agents. 1284

Exhibit 14.

New York, November 6th, 1891.

Messrs. E. J. Rudgard Wigg & Co.,
24 Beaver Street, City.

Dear Sirs:

We are in receipt of your favor of the 5th inst., and are glad to see that you are willing to accede to our request to have the defects in the matter of speed of

1285 the *Ceres* investigated, and for that reason we consent to withdraw our letter of the 4th inst. We trust your investigation will lead to the ship's making rate of speed contemplated in the charter.

Yours truly,

G. Wessels & Co.

Exhibit 15.

November 24th, 1891.

1286 Messrs. E. J. R. Wigg & Co.,
City.

Dear Sirs:

We to-day received a letter from Messrs. Beijer in which they advise the receipt of our letter of complaint to them as to the failure of the *Ceres* to maintain the speed provided for in the charter. They pass our complaint by unnoticed, and we to-day have given them formal notice that we shall make claim upon you for damages for such failure. We shall insist upon our
1287 proper rights in this matter, inasmuch as they evince no spirit to remedy the defects we complained of.

The only way in which to have the ship brought up to the speed in the guarantee, is for us to make proper claim for monied damages, and we think such payment will tend to improve the service they are giving us. We therefore notify you that we shall make such claim for damages, and shall reserve the question of amount till the ship's return. We also notify you that we may throw up the vessel on her
1288 present trip for such failure, as is our right under the charter. Our decision in this matter will also be given upon her arrival this time.

Yours truly,

G. Wessels & Co.

1289

Exhibit 16.

NEW YORK, 24th November, 1891.

Messrs. G. WESSELS & Co.

DEAR SIRS:

We are in receipt of your favor of even date, and are rather surprised to receive such, in view of the fact that the question involved has already been settled between yourselves and us by the letters that passed between us on the subject.

We fail to see that Messrs. Beijer & Co., passing over 1290
your complaint unnoticed, involves in any way the arrangement entered into by us to endeavor to place the vessel in such position to give you every satisfaction, and we still stand prepared to carry out this agreement after consulting Captain Svensson, on his arrival, and obtaining his consent to do what may be found necessary to increase the speed of the vessel. We trust you will allow the matter to stand until the vessel's arrival, so that we may then go into all detail in the Captain's 1291
presence, and kindly notify us whenever we may expect her.

Yours truly,

E. J. RUDGARD WIGG.

P. S.

As we have already notified you, we must demand the right reserved in clause 13 of charter party, and cannot accept delivery of steamer as you propose.

1292

Exhibit 17.

MALMO, 24 November, 1891.

Messrs. G. WESSELS & Co.,
67 & 69 Front Street,
New York.

DEAR SIRS:

We wrote you on the 5th inst. and beg to confirm that we on the 21st receipted to Skanes Enskilda Bank for your account Dollars 1491-26 being the payment due on the 17th inst. Seeing that you continue to de-

duct 5% and Messrs. Rudgard, Wigg & Co. continually writing us at this point we would feel obliged if you would settle this matter with them.

We are sorry to learn from Messrs. Rudgard, Wigg & Co. that there is reason to fear that *Ceres* will have be detained on her next arrival. As regards speed we have on former occasions expressed our opinion and Captain Svensson will have confirmed that the *Ceres* has always made above 11 knots in her regular trade.

Vesta and *Eos*. In conformity with the wish expressed in yours of 21st September we have been corresponding with Mr. R. William, Jr., about these vessels and sent him plans.

We remain,

Dear Sirs,

Yours faithfully,

G. & L. Beijer.

Exhibit 18.

New York, November 24th, 1891.

Messrs. G. & L. Beijer,

Malmo, Sweden.

Dear Sirs:

We have your favors of the 30th ult. and 5th inst. and note the same. We see that you take no notice of our complaint as to the failure of the *Ceres* to keep up the speed guaranteed in our charter party. We shall to-day notify Messrs. Wigg & Co. that we shall expect the ship to pay us for the amount suffered by us through such failure. We had certainly expected that you would have taken proper notice of the complaint we made, but you pass it by without reference. We can not agree to your proposition to have us make claims for any reductions from the hire on you and wait for your approval and remittance of such amounts; such action would be entirely out of the ordinary course of business and we therefore accept your alternative to have Messrs. Wigg & Co. represent you as your agents here. Our intention was to have the Captain certify

to any deductions and then take them from the hire due, thus saving you the cost of your agency fee; but as you do not seem to appreciate our efforts, we shall, as heretofore, transact business through Wigg & Co. We give you formal notice that the ship is not up to speed, while she is burning heavy amount of coal, and we shall insist upon our being reimbursed for damage sustained through failure of the ship to maintain her guaranteed speed of 11 knots all day. Your enclosed letter to us will be handed to Capt. Svensson on his arrival. 1297 1298

Yours truly,

G. Wessels & Co.

Exhibit 19.

Malmo, 5/12, 1891.

Messrs. G. Wessels & Co.,
218 & 220 Washington Street,
New York.

1299

Dear Sirs:

Your favor of 24th has crossed our respects of same date. Our wish has always been to meet you on all reasonable points and we have instructed our Captain accordingly; but if he cannot satisfy you as regards the speed we fail to see what we can do here. The ship's log will prove that she always made above 11 knots in her European trade, and we have authorized no one to state anything more. If, therefore, you think it right to make a claim against us we shall have to transfer it to the brokers. 1300

We hope, however, that you will reconsider your decision and that matters will proceed smoothly and pleasantly.

Yours truly,

G. & L. Beijer.

1301

Exhibit 20.

DECEMBER 11th, 1891.

CAPT. SVENSON,

S. S. *Ceres*.

DEAR SIR: Your steamer having been rechartered by us to Geo. O. Vanderbilt, in conformity with the copy of said charter party enclosed, we request that you will follow out the provisions of that charter so far as they do not conflict with the terms of the orig-
1302 inal charter entered into between your owners and ourselves. You will find that the terms of the present charter will not likely conflict in any way. We have not given any guarantee of speed, but ask you do all you can for the present charterer in getting the speed of the ship up to as high a rate as you can with the coal they furnish you. Please report to us on each arrival in this country and advise us at once if there be any question of dispute arising between you and the charterers. You can draw on us for your dis-
1303 bursements up to the amount mentioned in your charter party with us and we will pay it in accordance with the charter. Draw on us at ten days' sight if you draw so that there will be your letter of advice arriving ahead of the draft. We shall take the vessel back again under our present charter when the re-charter expires, about the 1st March. We trust you will find no trouble with the present trade you are to run in, and are,

Yours truly,

1304 G. WESSELS & CO.

1305

Exhibit 21.

DECEMBER 11th, 1891.

Messrs. E. J. RUDGARD WIGG & Co.,
Agents S. S. *Ceres*,
City.

DEAR SIRS:

We wish to call your attention to the fact that the *Ceres* is not making the guaranteed speed as per charter party, and that from observations made by Mr. Roberts, *former* Chief Engineer of the Str. *Jamaica*, 1306
we are led to believe that the entire cause for the trouble lies with the Chief Engineer, now in charge of the engines. Our engineer is firmly convinced that the ship can be kept at the speed provided for, but through neglect of the engineer to enforce sobriety among his firemen, and subordinate officers, the ship's speed falls off. We bring these facts to your notice, and ask that you have them remedied and thus avoid continual complaint on our part.

1307

Yours truly,
G. WESSELS & Co.

Exhibit 22.

MALMO, 12th December 1891.

Messrs. G. WESSELS & Co.,
218–220 Washington Street,
New York.

DEAR SIRS: 1308

We wrote you on the 5th inst., and have to-day received through the bank dollars 1,093 and await Messrs. Rudgard Wigg & Co. account.

You may rely upon our being desirous of doing anything reasonable in the way of meeting you. This we have told you on several occasions, but from the tone of your letter you don't seem to appreciate it. We fear there must be some misunderstanding, unknown to us, and if this can be removed by our engaging

1309 another agent more pleasing to you, we are willing to do so. We wrote Captain Svensson to this effect.

Please observe that, as before said, Captain Svensson has full power to act on our behalf. We have given him this power in order that you should have no cause to complain.

We remain,

Dear Sirs,

Yours truly,

G. & L. Beijer.

1310

Exhibit 23.

Decr. 18th, 1891.

Messrs. G. & L. Beijer,

Malmo, Sweden.

Dear Sirs: We are in receipt of your favor of the 24th ultimo and note the same fully. We are at a loss to account for you expecting us to make any settlement of commission with Messrs. E. J. R. Wigg &
1311 Co. If you will look at the charter party, you will find that the commission is due to R. Williams, Jr., and not to anyone else; we have paid Mr. Williams his commission of 2½% regularly and that settles the matter, as far as we are concerned. We have explained the matter to Mr. Wigg and he knows that we are correct in the matter. Apparently there is some money due to Williams by Messrs. Wigg & Co. and Mr. Williams is holding back the commission to collect the amount due. We cannot pay anyone but Williams
1312 under the terms of the charter. Upon certificate that the time used by the ship was to be deducted we paid Messrs. Drexel, Morgan & Co. the hire due. Regarding the speed of the ship we have expressed our views to Messrs. Wigg and to Captain Svensson and from their assurances we think the speed will be improved. At the same time the ship has not made the guaranteed speed as per charter.

Yours truly,

G. Wessels & Co.

1313

Exhibit 24.

Letter head of G. Wessels & Co.

Jany. 5th, 1891.

Dear Captain:

Mr. Vanderbilt the charterer of the *Ceres* from us has been very slow in paying his charter money and so far we have only half of the hire due on Dec. 23d; we do not want you to leave Mobile until he has paid in full and also the hire due on the 8th inst. Will you 1314
kindly keep us posted, using telegraph if necessary, as to your movements loading, etc., but do not leave Mobile until we wire you that hire is settled; in case you get this before any cargo besides bananas that you may have inward, is discharged you might wire us what you have in and whether you shall deliver or not; the bananas we do not care to hold for freight.

In case you need legal advice at any time consult G. L. & H. T. Smith, 36 St. Michael st., Mobile, telling them that you do so on recommendation of 1315
Wing, Shoudy & Putnam, our N. Y. lawyers.

If you go on another voyage for Mr. Vanderbilt, please telegragh us immediately upon your arrival at Mobile, telling us what you have in, as it may be necessary to hold next cargo for the charter, as he seems not to have money enough to run the thing; before discharging go to Swedish Consul's to see if there is any telegram for you, as we shall send all messages and letters for you there. Kind regards from the writer (C. T. W.); he got back on the 30th.

1316

Yours truly,

G. Wessels & Co.

Of course you'll have to keep this matter private, as it might hurt them if it got out.

1317

Exhibit 25.

1/7 1892.
NEW YORK.

To CAPT. SVENSSON, Swedish SS. *Ceres* to be delivered immediately on her arrival Mobile.

Before discharging cargo see our letter and telegram at Swedish Consulate.

G. WESSELS & Co.

SVENSONS.

1318

Exhibit 26.

1/7 1892.
NEW YORK 7.

To CAPT. SVENSSON, SS. *Ceres*,
c/o Swedish Consul.,
Mobile, Ala.

Hire still unpaid refuse deliver bananas and other
1319 cargo until we wire you. Telegraph your arrival and cargo.

G. WESSELS & Co.

Exhibit 27.

8 Jan. 189
NEW YORK 8

To CAPT. O. J. SVENSSON,
1320 c/o Swedish Consul, Mob.

Telegram received two thousand not enough will not release until twenty-four hundred & fifty dollars are paid us in New York and under Smith's advice What condition and quality is cargo.

G. WESSELS AND Co.

1321

Exhibit 28.

Letter head G. Wessels & Co.

Jany. 8th, 1892.

Capt. O. J. Svensson,

Dear Sir:

We wrote you on the 5th and wired you last night. As wired you last night, refuse to deliver any of your cargo either bananas or other goods until the balance of hire of $825,—due Decr. 23d and the $1625—due to-morrow 8th are paid 1322 to us and we wire that it is paid. Neither of these amounts have yet been paid to us and the only way we see just now to do is to hold on to the cargo. As the charter says the hire is to be paid in New York a tender of the money to you there is no good. Wire us immediately what cargo you have in and what order the fruit is in and also what you advise, if anything and we will reply promptly; if you think it necessary go to Mr. Smiths the lawyer we mentioned in our last letter, show him charter and our letter and act under 1323 his advice; there will be some representative of Hoadley & Cos. at Mobile to sell the cargo. Above all keep us posted as to what you are doing.

Vanderbilt don't seem to be very responsible; the second check he gave us for hire was returned no good and he has only paid us $800 since on account. We hope nothing has happened to your ship although we are told by Vanderbilt that Hoadleys had a cable that you had sld. for Mobile at a date that would put you there last Monday and it looks as if you had broken 1324 down or something of that kind.

Yours truly,

G. Wessels & Co.

The writer paid Rich your bill last Dec. as soon as he heard you were not coming back. Please send us as soon as you can your log abstract covering all ports —also stating distance from P. D. Toro to Mobile, as we want to know just what ports you use down there.

1325

Exhibit 29.

Jan. 9, 1892.
N. York, 8.

Capt. Svensson,
SS. *Ceres*, Mobile.
c/o Jason Gillett.

See Smith and file libel against cargo as our agent in our name early to-morrow for twenty-four hundred & fifty dollars Will telegraph if we get money here
1326 Keep us posted.

G. Wessels & Co.

Exhibit 30.

Jan. 9, 1891.
New York 9

Capt. O. J. Svensson c/o Jason Gillett Mobile.

Hire still unpaid was specie paid you on account of
1327 charter or is it on freight if on freight who does it belong to and have you libelled it if not do so at once can Smith attach proceeds bananas act quick telegraph fully and plainly

G. Wessels Co.

Exhibit 31.

3:24 p. m. Jan. 9, 1892.
New York, 9.

1328 To Capt. Svensson,
SS. *Ceres*.
c/o J. Gillett, Mobile.

We have received hire until Jany twenty-third release everything upon receiving costs and Marshal's fees how much disbursements will you draw for you may sail under order of Vanderbilt.

G. Wessels & Co.

1329

Exhibit 32.

Letter head of G. Wessels & Co.

Jany. 9th, 1892.

DEAR CAPTAIN:

We note all your telegrams; when we wrote you on 5th not to hold the bananas we thought that Vanderbilt would pay up next day which he didn't do. However we got the money this morning and at once wired you to release everything upon getting the costs and Marshal's fees if any had been incurred. The hire is 1330 paid up to the 24th not 23d as we wired. Both you and we have been put to lots of trouble by Vanderbilt and we hope it won't happen again. For your trouble on our behalf we are much obliged to you; had it not been that we knew we could rely upon your judgment and promptness we should have sent some one down to meet you.

We wired you at same time to go to sea (or sail) under Vanderbilt's orders; the next hire is due 24th and we hardly think that we will get our pay on time; 1331 hence, please, before you discharge any cargo at all, go to the Swedish Consuls, and see what instructions we have sent you there regarding your cargo; we prefer to wire to the Consuls rather than to Mr. Vanderbilt's agents, as if the latter suspects there is any chance of the telegram being to stop cargo they may decline to receive it. In case we wire you to stop the cargo you can do it in two ways; first decline to deliver as Captain acting for us; of course this can be only a temporary measure, but will do for a day while communi- 1332 cating with N. Y. Second, file a libel against the cargo as our agent and in our name; a U. S. Marshal will then be put in charge and unless bonds are given or cash put up the cargo will be sold at auction as soon as the Marshal thinks necessary; if you have to hold cargo go around to the lawyers we wrote about (Smith) and act under their advice; if you come back to New Orleans instead Mobile go to Marshall J. Smith & Co., Baronne St. and ask them to recommend you to a good lawyer; they are N. O. agents of Johnson & Higgins,

1333 our insurance brokers here. We enclose you a short code which please use to cable us when you leave, so that we may know to what port here you are coming and when to expect you.

We hear from Vanderbilt and judge from your wire that the cargo is unusually good; what are the chances of our getting fruit there and how do you think it will compare with where we are now running; you know the difficulty in loading on Ceiba coast, the long route along coast, the way it gets scarred and bruised loading
1334 etc. We shall be very glad if you will look into this carefully and write us fully; it might perhaps pay us to run half or even the whole of our boats from there to New York. Possibly our Mr. William G. may go round with you next trip, if Vanderbilt lasts that long; after our last fall on Ceiba coast we are not in love with Spanish Honduras as a winter loading place.

About Pedro C. Lopez and Miguel of Bocas: Did you learn anything of either of these men; we have both insured and the former, Mr. Romero said was
1335 hardly likely to live very long; and news about either of these will be very interesting.

Mr. Romero was talking to us here about our going in with him in case he should cease doing anything with present parties; of course this wants to be kept very quiet, but you might suggest to Mr. Romero to write to us fully what he can do; i. e. how much fruit and strs., how often—price—how paid, i. e. in what lengths time drafts; these latter would, as customary there, be 60 days, we suppose, and fruit would be 50
1336 cents Col. currency.

Mr. Vanderbilt hasn't as yet decided just where he will send you this next trip; it may be here or New Orleans instead of Mobile; we do not expect to know before we send this off.

You will of course wire us your arrival and cargo, etc., as soon as you arrive, no matter whether you have cabled us or not; you can only cable us from Port Limon, we fancy, and if there's no chance of getting through quick it's no use to waste the money; our cable address is "Wessel's, New York."

If there is any more substantial fruit man in Bocas 1337
than Romero you might bulk to that man; we hear that Romero isn't much to be depended on.

In case you bring news of the death of any of our insured friends please telegraph us first thing saying who it is so that we can have the necessary blanks with you before you sail again as in such cases time is money.

Lloyd's man is still at wreck of *Jamaica* trying to save her; we have no news of how he is getting along.

Without further for to-day and with our kind regards 1338
we are Yours very truly,

G. Wessels & Co.

Happy New Year from the writer.

Exhibit 33.

Jan. 13, 1892.
New York 13.

Capt. O. J. Svensson.
Care Jason Gillett Mobile. 1339

What orders has Vanderbilt given when to sail and for where wire quick.

G. Wessels and Co.

Exhibit 34.

Jany. 14th, 1892.

Captain O. J. Svensson,

Dear Sir: 1340

We note yours 10th and 11th also the one to the writer and telegram to-day.

We cannot advise you what to do with the ship until we hear from Mr. Vanderbilt; in the meantime you must simply lie there or act under whatever orders he gives or gave you; he has paid up to the 24th and until then is entitled to the control of your vessel. Of course if he don't pay up on 24th for following half month we then have a claim on him for that half month and perhaps for entire balance of charter; so

1341 that if, by chance, you have any coal etc. in ship belonging to Vanderbilt its that much property to attach, it will be pretty hard to find any here that we can seize.

In case we should send you out to Bocas for a cargo on 25th what do you think of chances of getting one and how much could you get?

Could you get the money or cargo in Bocas on drafts at say 30 or 60 days? We note all you say about quality of the fruit. How long do you think it would take
1342 you to come up here and do you think you could land a cargo here green? Without further for to-day, we are, dear sir,

Yours truly,

G. Wessels & Co.

By the way in signing any bills lading after this, always write across them, 'Subject to all provisions of charter-party.' This will bring all cargo under clause 17 giving us lien upon it.

1343

Exhibits 35 & 36.

(Copy.)

N. Y., Jan. 14/92.

E. J. Rudgard Wigg & Co.

City.

Dear Sir:

We give you formal notice that we wish steamer *Ceres* to lay up for two weeks under terms of the char-
1344 ter party without pay from 17th Jany.

Yours truly,

(Sigd.) G. Wessels & Co.

(Copy.)

N. Y. Jan. 14/92.

E. J. Rudgard Wigg & Co.

Dear Sirs:

We enclose notice of the lay up of the *Ceres*. Please communicate this to Capt. Svensson, Mobile. The

ship is now laying there. We would like to see you 1345
this afternoon before 5 o'clock.

Yours truly,

(Sigd.) G. Wessels & Co.

Exhibit 37.

Jan. 15 1892.

N. York 14

To Capt Svensson, 1346

c/o Jason Gillett, Mobile.

Vanderbilt has surrendered vessel and coal to us. Keep coal on board will probably send orders Saturday has Vanderbilt any other property in your possession ?

G. Wessels & Co.

Exhibit 38.

Letter head of G. Wessels & Co. 1347

Jany. 15th, 1892.

Capt. O. J. Svensson,

Dear Captain :

We have your letter of the 12th ; we wired you last night that Vanderbilt had surrendered vessel and all his coal on board to us and to keep the coal on board, which we confirm. Confidentially, Vanderbilt is reported to be bankrupt and that was the best thing he could do. We do not to-day know just what we shall do with you, but we have given Mr. Wigg notice that 1348
after present payment of hire runs out (17th we think) you are to lay up the 2 weeks so that you probably will not leave Mobile for some time yet ; as soon as anything different from this turns up we shall wire you.

What do you think of the chances of getting a cargo at Bocas starting out from there say about March 1st ? we asked you in our last letter, we think, whether this business there could be worked on drafts ; do you know

1349 how this is and whether drafts would have to be 30 or 60 days.

Without further for to-day, we are, Dear Captain,

Yours truly,

G. Wessels & Co.

By the way, your mate has an unpaid order on us for $90, that Petersen gave him to draw and put in Seamen's Bank; if he still has it, let him send it and the bank book up by express and writer will have
1350 the money deposited.

Exhibit 39.

Letterhead of G. Wessels & Co.

Jany. 16th, 1892.

Capt. O. J. Svennson,

Dear Sir:

We have your telegram of the 15th recd. this A.M.; in view of the fact that we have not asked your owners
1351 to compromise the charter, we hardly know just what the telegram means. As written you yesterday, we notified your agent (Mr. Wigg) that after to-morrow you were to lie-up the 2 weeks; he asked us if we would allow the owners to run the ship during that time, and for say 2 weeks more, for their account; in order to save the owners the loss of 2 weeks' hire or use of the boat; we told him we would be willing to make some such arrangement for say the next 4 or 6 weeks and we suppose in cabling the owners, his wire
1352 to them or theirs to you, got mixed up. As the matter now stands you will now lie up the 2 weeks and at end of that time, your hire will again begin to run; if this is changed in any way, we shall notify you at once. Without further for to-day and with the writer's regards, we are,

Yours very truly,

G. Wessels & Co.

Mr. Wigg has just been in and tells us of his wires to you, etc.; so that we have a clear idea of why your

telegram to us was sent. His idea seems to be that if 1353
we waive the right to our 2 weeks free lie-up, the owners get the use of the boat for 30 days and actually lose only $1,500 for it as they only get paid one-half month during that 30 days; of course, at that basis there should be some little profit for the ship in the coal and hemp trade as the vessel starts on a basis of £300 hire for the 30 days.

It may interest you to know that we just learn that Catheil, who kept the Livingston Hotel, was drowned with all his boat's crew off Livingston, during a heavy 1354
blow about Jany. 1st.

G. W. & Co.

Exhibit 40.

MALMO, 16th January, 1892.

Messrs. G. WESSELS & Co.,
218–220 Washington Street,
New York.

1355

DEAR SIRS:

We wrote you on the 12th ult., and have your favor of 18th December. Through Captain Svensson we have received copy of your favor to him dated 11th December, and have been expecting direct communications from you.

Yesterday we received a telegram from Messrs. Rudgard, Wigg & Co., which until now is quite *incognito* to us.

The instalment due on 2d inst., was only received 1356
on the 12th inst.

Yours faithfully,
G. & L. BEIJER.

1357

Exhibit 41.

Copy.

MALMO, 18th January, 1892.

MESSRS. G. WESSELS & Co.,
218–220 Washington Street,
New York.

DEAR SIRS:

We wrote you on the 16th inst., and have been informed through Captain Svensson that you have re-let
1358 the *Ceres* to Mr. Geo. O. Vanderbilt, Princeton, N. J., for about 3 months up to the 1st of March, you having cancelled the stipulations as regards the speed as well as 13, 28 and 31%. In spite of this we received the following telegram on the 13th inst., presumedly from Messrs. Rudgard, Wigg & Co.,

> "*Ceres* interest (The charterers insist on the following clause) 28 Paltering (days to count from) disprove (seventeenth days) lassitude (charterers wish to cancel if it can be arranged) until
> 1359 dictate (first day) March giving privilege use our non-embossed (with positive authority believe can fix at) coal Pensacola, Colon, thirty days vessel now Mobile. Failing this interview wire what conditions you will concede and authorize us to fix (one month).

which we are sure has been sent without your knowledge. Being unable to understand these proceedings, we have laid the matter fully before our clubs in London, The Standard Steamship Owners Protecting and
1360 Indemnity and Ship Owners Mutual Freight, Dead Freight Demurrage and Defence Associations and hope that they will settle the matter with Mr. Vanderbilt.

Up to writing this we have not received the instalment due yesterday.

From the fact of your re-chartering the *Ceres* we presume that you do not intend to keep her after the 1st of March.

Yours truly,
(Sign.) G. & L. BEIJER.

1361

Exhibit 42.

New York, 20th January, 1892.

Messrs. G. Wessels & Co.,
New York.

Dear Sirs:

Referring to your favor of 14th inst., giving us, as agents of S.S. *Ceres*, formal notice that you required this steamer to lay up for two weeks under terms of charter party, we now beg to inform you that having communicated with the owners of S.S. *Ceres* they fail 1362
to construe the clause No. 28 in the charter party to read that the vessel during period named shall lay up for two weeks and hire cease during that time. They claim the hire for one-half month was due on 17th inst., and insist on an immediate remittance, and we have received from them three cablegrams asking why such remittance has not gone forward. We now, under instructions from Messrs. G. & L. Biejer, owners of the steamship *Ceres* protest against your withholding the 1363
half-month's hire due 17th inst., and shall hold you responsible for any claim for damages that may accrue through your action in the premises.

Yours truly,
E. J. Rudgard Wigg & Co.,
Agents.

Exhibit 43.

Malmo, 21st January, 1892. 1364

Messrs. G. Wessels & Co.,
218–220 Washington Street,
New York.

Dear Sirs:

We confirm our respects of the 18th inst. Not having received the instalment due on the 17th (in this case 16th) we must reluctantly note a protest. We take it that you, not Mr. Vanderbilt, are responsible to us for the payment, although the ship's responsibility

1365 has been altered in accordance with the charter of 30th November.

We have asked Messrs. Hurlbut to see you, because we have other employment for the *Ceres*, if you have given up her after the 1st March, which we infer from the New York telegram quoted in our letter of the 18th.

Yours truly.

G. & L. Beijer.

1366

Exhibit 44.

Jan. 22, 1892.

New York, 22.

To Capt. O. J. Svenson,

c/o Jason Gillett, Mobile.

How much weight can you load on twelve feet draft besides seven days coal after emptying all tanks how long notice will you want to get ready.

G. Wessels & Co.

1367

Exhibit 45.

Jany 23, 189

Mobile, Ala. 23.

To G. Wessels & Co.

Ceres draws over twelve feet empty ready six hours notice.

Svensson.

1368

Exhibit 46.

Letter head of G. Wessels & Co.

January 23d, 1892.

To Capt. Svensson,

SS. *Ceres*.

Dear Captain:

We have yours 19th and 20th; we regret that we have to lay you up, but bananas won't pay to run at

present, and we are doing same with the *America*. 1369
What we wrote about the £300 basis was this; during the present month the owners get only a half mos. pay, as the lay up gives them nothing for that half month; hence, if we allow the owners to run the boat during the whole of this month, the boat only costs them the sum of £300 during that month, as that is all they get out of it; of course, if we didn't waive the lay-up it would cost them double that amount. After we take you back off the lay-up the original charter goes into effect again. We are sorry you misunderstood us. 1370
Heating pipes: Andy says these are also in lower forward hold; is this wrong? Please let us know.

We note all you say about Bocas, which will come in a little later on; at present bananas won't pay from anywhere; the *Banan* that came out for Mitchell, and has made only one trip to N O, is going to run cargo out to Colon, we hear; we shall try to recharter your boat on a time charter for 4 or 6 weeks, and after that she will go back into bananas; it may interest you to know that the best offer we have gotten so far as £350 1371
for you; we shall wire you if we recharter, and what to do. We note from your telegram that you'll be ready on 6 hours' notice, and that you draw over 12 ft. empty, which we supposed was the case. Coal: your abstract of log that you mailed us says 65 tons, while your letter says 50; in case we recharter you will have to get the agent of charterers to agree as to amount of coal they are to pay for; as this coal goes to pay Vanderbilt's debt to us, we hope that your letter is wrong and your log abstract is right, and that 1372
you can get charterers to pay for 65 tons.

In case you go to Bocas for us we will try to have our Mr. W. G. W. go with you, as you ask.

We shall try to bring you back to N. Y., but of course will have to take what we can get in way of recharter; you are too deep draught and don't carry enough dead weight enough to make it easy to get a charter for you.

1373 Without further for to-day, and with the writer's regards, we are

Yours very truly,

G. Wessels & Co.

Exhibit 47.

Jan. 25, 1892.

New York, 25.

1374 Capt. Svensson,

c/o Jason Gillett, Mob.

No hire due until end lay-up under your charter we hear Vanderbilt died Saturday at Mobile telegraph if true.

G. Wessels & Co.

Exhibit 48.

New York, Jany. 26th, 1892.

1375 Capt. O. J. Svensson.

Dear Captain :

We have chartered you to W. D. Munson for one, option of two trips, to carry out coals at £350. per mo. ; we will enclose charter if ready in time. We recd. your wire that owners again demand payment, which is getting monotonous ; you know us well enough, now, to know that we will pay as soon as we think it is due, and that they might as well save their cable bills. For your wire about Vanderbilt we are

1376 much obliged ; we heard a rumor that he was dead, which seems to wrong, as it said he died in Mobile Friday. You are not to begin on Munson charter until Feby. 1st, and before that time we will write you again more fully. The price we get shows in what a state the market for boats is ; we are in hopes that your owners will be a little more satisfied with rate they are getting after learning this. As we now understand it, you are to come back to Mobile or some Gulf port in ballast, but Munson is trying to charter

you back for bananas, in which case you'll load at 1377
Bocas; if this is the case, we will try to have Mr. W. G. W. go with you; of this we will advise you later. We are sorry we could not lay you up here, where you and Hooslef might have consoled each other; but you can take comfort from the fact that he has been laid up with a bad cold for the past week and that the temperature to-day is only about 10 degrees. With regards from the writer, we are

Yours very truly,

G. Wessels & Co. 1378

After the 2 trips for Munson we shall again run you on our account.

Exhibit 49.

Jany. 27th, 1892.

Capt. O. J. Svennson:

Dear Sir:

With this we send you a copy of your recharter; 1379
you will note that they take vessel on Feby. 1st; after they take her, all expenses, outward port-charges, etc. are to be paid by them; we understand that the pilotage inward &c is not paid from your letter; you might see if you can induce Hoadley's agent to pay this and any other bills that ought to have been paid by Vanderbilt; if they wont we must and you might get the bills together if more than one, check them as correct and tell the people to mail them to us and we will send check in return. 1380

Coal: Mr. Canfield, agent for charterers, will come over from Pensacola and see you; arrange with him as to amount of coal they are to pay us for and remember, if you please, to mark on report whether the tons you agree on are 2000 or 2240 lbs. to ton; also as to what the current rate at Mobile is, you say 3.60 per ton 2000 lbs. alongside.

We dont yet know if you are going to come back in ballast or not hence cannot write anything about fruit to-day. We enclose bills that we paid Rich for you

1381 which amt. to 9.52 sols more than you gave us here as the amount; please look over and say what we shall do about it.

If anything more to add will write you to-morrow; if not you will not hear from us until your return; kindly remember to telegraph us your arrival back promptly and what cargo, if any, you have. We also wish to thank you again for the trouble you had for us on the Vanderbilt cargo; we assure you it is appreciated. We are,

1382 Yours very truly,

G. Wessels & Co.

We enclose blank logs in case you are short.

Exhibit 50.

Jan. 29, 1892.

New York 29

Capt O. J. Svensson,

1383 C/o Jason Gillett.

Mailed you charter to export coal Coon twenty-seventh telegraph if not rec'd.

G. Wessels & Co.

Exhibit 51.

Letter head of G. Wessels & Co.

Jany. 29th, 1892.

Dear Captain Svennson:

1384 We have yours of the 26th recd. this a.m.

So far as the Hemp trip is concerned, of course if your N Y agent (Mr. Wigg) thought he could make money for you and you and the owners agreed it was not our place to interfere as it would save us some money; it was new business to us; after you refused we looked into it carefully with a view to running it for our own account and we liked it so well that sooner than risk it was chartered you to Mr. Munson, which is a practical confirmation of your judgment.

We don't think the disagreement with the owners 1385
will amount to much; if it does it will not be our fault; it is a pity that one of them cannot come over here for a visit; he would understand things better if he did. We thank you for information about pipes, coals, etc. About Mr. Vanderbilt: we think he would have been liberal but unfortunately he has lost all his money; we haven't heard from him for 3 weeks. We wrote you concerning the bills standing out there. Without further for to-day and with our regards, we are,

Yours truly, 1386

G. Wessels & Co.

Exhibit 52.

2/3 1892.
New York 3.

Capt. Swensson,
C/o Jason Gillette,
Mobile, Ala. 1387

Munson has chartered *Ceres* for two trips hence follow his orders accordingly.

G. Wessels & Co.

Exhibit 53.

Feby. 5th., 1892.

Messrs. G. & L. Beijer,
Malmo. 1388

Dear Sirs: Yours of the 16th and 18th ultimo have been duly recd.

We note that you consider that we have waived certain clauses of the *Ceres* charter and that we shall not run her after March 1st.; we do not know where you got this information but it is entirely incorrect; we have waived no clauses of the charter and until you receive proper notice that we shall stop running her, it is not your province to assume that we shall give her up at any time.

1389 The Vanderbilt charter that you refer to is a matter between that gentleman and ourselves only and does not in any way concern your good selves; it is correct that we in our sub-charter to him did not give him the guarantee you gave us, but this was for the reason that we do not guarantee things that we cannot carry out; had we given him the same guarantee that you gave us, we should have speedily been mulcted in damages for non-fulfillment; it may interest you perhaps to know that this gentleman has since
1390 failed and defaulted on his charter. Rechartering: this is one of our privileges under the charter and the boat is now en route to Nicaragua under another sub-charter of the boat by us £350 per month.

Wigg cable: this was sent with our consent; we assented to Mr. Wigg's request to let the boat be run on your account during the 2 weeks of the lay up; as he thought it would be a good thing for the Owners; the matter has since fallen through; it meant our allowing you to run the boat for the 2 weeks instead of devot-
1391 ing that time to bringing the boat into good order by the usual annual overhaul.

Remittances: on the 1st instant we sent Messrs. Drexel & Co. check for the 1-2 month hire due that day asking that the receipt state the time the hire was paid for; we believe they are now asking for authority to do this and in the meantime we hold the money at their disposal. We note that your last payment was not made on time, by your letter; the writer was at that time abroad and so cannot to-day state the exact
1392 reason for such delay but he presumes it was owing to something of the same nature that the money offered your Bankers last Monday is still unpaid. We note that you have laid these matters fully before several clubs in London; precisely what matters you mean we do not know. You also some little time ago cabled to some N. Y. brokers offering them this vessel while under charter to us; we are at a loss to understand what these unbusiness like proceedings mean; they are very annoying to us and we must insist that such conduct be discontinued; the charter provides that any dispute

thereunder shall be arbitrated here and that method is always open to you. 1393

It is our present intention to continue running this boat but we must again call to your attention that you have guaranteed her to make a certain speed and that we insist that such guarantee shall be carried out; we have, from good feeling toward Capt. Svensson, made no claim for damages, owing to non-fulfillment of this clause, as yet, but it will not be entirely safe to judge from this, that we will do the same in the future. We have written you several times on this subject and do not propose to do so again. We trust it will be unnecessary. Without further for to-day. We are, 1394

Yours very truly,

G. Wessels & Co.

Exhibit 54.

Letter head of Drexel, Morgan & Co.

New York, Feby 9, 1892. 1395

Messrs. G. Wessels & Co.,

City.

Dear Sir:

We received from you yesterday on demand after banking hours a check for $1491.25 for account of the Skanes Enskilda Bank of Malmo, being in full for hire of SS. *Ceres* for one half month in advance beginning at 6 P. M. 31st January, without prejudice to owner's claim for hire from 17th January at 6 P. M. to 31st January at 6 P. M. 1396

Yours truly,

Drexel, Morgan & Co.

Exhibit 55.

Saty., March 26th, 1892.

Capt. Svennsen:

You will proceed to Colon direct; on arrival see Mr. Maduro and arrange when to take the fruit he is to get for you. We give you a letter for him which

kindly deliver. After arranging with him as to when to load you must stick to the schedule you lay out. In case he cannot be sure of more than 10,000 to 12,000 bunches, you can arrange to take 4,000 or whatever you can carry, from Romero at Bocas. At Bocas you can land your out freight either when you call to order the fruit or when you get back as best suits; it would be as well to get it out the first time you go there, if no time is lost by doing so. You will then proceed to Greytown to discharge cargo for there and take all back freight the Canal people have for you. You will, of course, not take so much freight as to shut out the fruit you have engaged. After finishing Greytown go back to Bocas, take in the fruit you ordered there, if any, and then go to Colon and finish fruit and then back here. Find out in Colon on first call if they work Sunday so that there may be no danger of your being stuck there on that day.

Back freight: Get any that you can in Bocas; rates are a cent a pound right through on everything plus 5% primage.

Bocas fruit: In case price there is over 75 cents per bch. don't take any, but try to drive the price up there for the others: we do not want it at over that: you will, of course, let Maduro get all he can.

Ivory Nuts: Maduro has a lot which you can take on your return to Colon if you have room; rate $5 U. S. money per ton plus 5%.

Try to find out what the Aspinwall Fruit Co. are paying the Pacific Mail boats for freight on their Bananas.

Cocoanuts: If Lopez has secured any for us at 25 Columbian you can take them; this price includes bringing alongside. You can buy up to 40,000 in all at this price.

Try to get the Bocas fellows to send up orders by you to be shipped by their agents per return of your boat; you can leave word about this on your first call.

You'll note that we wired and wrote Maduro that we could not use 6 hands; in order to help him out you can take up to say 5% of what he ships at 18 3/4

cents Col. per bunch, but we don't want even that 1401
many unless you are very short on cargo; if you are very short take all he has brought down and buy them at as much less than 20 cts. as you can.

Money: We give you 5081.30 in Col. halves; whatever you have left after paying for Bocas and expenses turn over to Maduro a-c of fruit he supplies; for balance you will give him a draft on us: the rate should be about 168 or 170 instead of 158 as he gave last time. You'll see we write him 60 days sight, but if he won't take that you'll have to sell at 60 days to someone else 1402
or give him 30 days. Find out what rate he will give you and see if you can do better elsewhere, but do it quietly.

Our arrangement with Maduro is: He gets 75 cents Col. per payable including stowing in ship all port charges on ship, wharfage etc.; in short he pays everything; sevens are 40 cts. per bunch. 6s. we are not required to take at all. He guarantees not less than 10,000 bchs.

At Bocas Fitzgerald will be your agent for out 1403
cargo only this time; let him get together all orders for cargo to come out by you next trip.

We trust you will have a pleasant trip and are,

Yours truly,

G. Wessels & Co.

SCHEDULE.

Lve.	N. Y.	Saty	Mch 26.	
Arr.	Colon	Monday	Apl. 4th a. m.	
"	Bocas	Tuesday	" 5th "	1404
"	Greytown	Wedy	" 6th "	
"	Bocas	Thurs	" 7th "	
Lve.	Bocas	Friday	" 8th p. m.	
Arr.	Colon	Saty	" 9th a. m.	
Lve.	"	"	" 9th night.	
Arr.	N. Y.	Mond	" 18th a. m.	

If don't load fruit at Bocas you can spend Thursday at Greytown & get to Colon on Friday.

1405

Exhibit 56.

SS. *Colon.* N. Y. March 30th, 1892.

DEAR CAPTAIN:

This will catch you on your arrival back at Colon; the *Gurly* after lying 10 days on coast only has 6,000 bchs. of bananas in; we do not know what the reason is as cable doesn't say, but it looks as if fruit is scarce there & price is up to Treals. Therefore, if Maduro's fruit amounts to anything, make sure that he doesn't
1406 dicker with any one else until he hears from us about what other boats we will send him. Hart may try to get from him, as also some of the N. O. people; you can tell him that if this cargo he gives you is satisfactory we will send you back at once to him and perhaps send him *Gurly* about Apl. 14, if we hear from you by cable in time If fruit is short on Honduras coast we shall *need* the Maduro fruit; and also if his, Maduro's fruit is good it will pay us better to run that than Honduras; if things look bad on Honduras coast,
1407 which we can't tell till *Gurly* gets here on 3d or 4th. (Sunday or Monday) we may let her go out to Key West for orders so that we can catch her there abt 10th or 11th and order her either to Colon or to Livingston. After we see you here we can decide if we can put on enough boats to give Maduro one every ten days; you want to point out to him that as soon as the Aspinwall Fruit Company find out that we are running fruit they will get the Pacific Mail SS. Co. to try to block him on Railroad cars and
1408 facilities and wharf room; he wants to guard against that: forewarned is forearmed but we suppose he will look out for that anyway. We trust you will appreciate the importance of giving us full information as to what you get, prospects, etc., in your cable which we shall look for about the 10th here; we shall get it Sunday if it comes in that day; borrow Maduro's A.B.C code and use it if you want to telegraph anything more than you have in the written code we gave you, only in cabling see that you don't

use words that are in both your written code and the A.B.C. if the meaning is likely to mislead us; sooner cable us plain English, but don't let Maduro see what you wire us. 1409

We shall wire you Saty. from here to get all 6s. you can from Maduro if needed to fill up, although we have already told you this.

The writer wishes he had gone with you; had we supposed that Gurley would have had such a short cargo, he would have done so; however, we know you will appreciate the importance of letting us know, by cable, whether we can count on Maduro as a supply or not; it may be that for some reason this cargo may be short while next will be all right; let us know that if that is the case; in other words it's important enough to spend what may seem a large amount for a cable sooner than be in the dark. Without time for more to-day and with kind regards, we are, 1410

Yours truly,

G. Wessels & Co.

Helguin doesn't go to Bocas this time as she has cleared for Jamaica, altho' that may have been done to fool people. 1411

Exhibit 57.

Copy.

Malmo, the 6th May, 1892.

Messrs. G. Wessels & Co, 1412

218–220 Washington Street,

New York.

Dear Sirs:

We wrote you on the 4th ult. and have your telegram of the same date,

"Don't understand message,"

for which thanks.

Not having received answer to our telegraphic inquiry addressed yesterday to Messrs. Rudgard, Wigg & Co. why the first installment this month has not been

paid, we have been placed in the unpleasant position to withdraw the *Ceres* agency from the hands of the same firm, and have transferred it to Messrs. W. W. Hurlbut & Co., 135 Pearl Street, which please note.

Yours truly,

(Sign.) G. & L Beijer.

Exhibit 58.

New York, May 21st, 1892.

Messrs. W. W. Hurlbut & Co.,

Agents S.S. *Ceres*.

Dear Sirs:

We hear from the owners of this boat that you are appointed her agents.

We are also to-day in receipt of a note from our lawyers that the Owners propose to contest the two weeks' lay-up last winter.

We beg you to note, that we shall not accept the boat under her charter to us, when she comes off dry-dock, as she is not up to the guarantees of the charter.

We have had the use of the boat for a day and a half this last half month for which no payment as yet has been made. For this we are ready to pay at any time; on the other hand the vessel has in some 80 tons of the bunker coals for which we shall be pleased to have you settle.

We hold in abeyance for the present our claims for damages arising through deficiencies of the boat under the charter.

We are, Dear Sirs,

Yours very truly,

G. Wessels & Co.

1417

Exhibit 59.

Letter-Head of W. W. Hurlbut & Co.

135 Pearl Street,
New York, May 23rd, 1892.

Messrs. G. Wessels & Co.,
City.

Dear Sirs:

s/s *Ceres.*

We have your favor of 21st May and beg to say that owners do not acknowledge your right to cancel the 1418
charter upon the ground stated.

The steamer is capable of performing the guarantees of her charter, with proper coals, and will be again ready to resume service under the charter, on Wednesday, May 25th, 1892.

We beg to advise you, that unless you continue the charter according to its terms, steamer will be rechartered for your account.

Yours very truly,
W. W. Hurlbut & Co, 1419
Agents.

Exhibit 60.

Letter-head G. Wessels & Co.

May 25th, 1892.

Messrs. W. W. Hurlbut & Co.,
Agents SS. *Ceres.*

Dear Sirs:

We have to acknowldege receipt of yours of 1420
the 23d, as also our verbal inquiry yesterday as to whether or not we would authorize your rechartering the boat to Mr. Dumois at £600, for one month. We should have replied to your letter sooner but for lack of time.

We confirm our verbal advice, that we can neither rescind our rejection of this boat nor accept any responsibility concerning a recharter. We have given repeated warnings to her owners, captain and late agents. The opportunities we have given her for bring-

1421 ing her up to the charter conditions have not been improved; we have suffered very heavy losses through her deficiencies, and it is idle now to tell us that she can carry out her charter conditions in view of her performances since we have commenced running her.

In order to avoid any misunderstanding, we confirm our verbal statement that we consider our letter of the 21st as an ending of the option on which we have lately been running the boat, even if it does not hold good as a cancellation.

1422 Will you kindly let us know at once whether or not you or the captain will pay us for our coals in the bunkers; you do not cover this point in your letter. We trust to be able to present our claims for damage shortly, and are,

Yours very truly,

G. Wessels & Co.

1423

1424

Exhibit 61.

ABSTRACT OF LOG of S. S. CERES, Voyage 1. Left Omoa Wednesday, 8th of July, 1891, at 3 P. M. Draft, forward, 13 feet; aft, 16 feet.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engines.	Wind.	Weather.	Report of Time passing Islands and Lights, Stoppages, Remarks, Etc.
Thursday.	1st day	204	210	18° 44′	86° 9′	N. by E. ½ E.	N. by E. ½ E.	75	64.1	N. E.	Stiff br'ze, high sea.	Left Omoa the 8th, 3h P. M.
Friday.....	2d "	253	253	22° 42.5′	84° 30′	Var.	Var.	77	64.5	Var.	Var.	Passed St. Antony the 10th, 5h 45m P. M.
Saturday..	3d "	280	258	24° 50′	80° 6.5′	"	"	77	65.1	"	"	" Havana the 10th, 11h 10m P. M.
Sunday ...	4th "	308	251	29° 37.7′	79° 28.7′	"	"	77	65.1	"	"	
Monday ..	5th "	280	225	32° 38′	77° 5′	"	"	77	65	N. E.	Storm.	
Tuesday...	6th "	308	248	37° 18′	73° 26.6′	"	"	75	64.8	S. E.	Var.	
Wed'sday.	7th "	201	201	.....	.....	"	"	75	64.9	S. S. W.	Foggy.	Passed Sandy Hook the 15th, 8h 0m A. M.
.....	8th "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Total Miles, 1,656; arrived at Bar at 8h A. M. on Wednesday 15/7/91. Total hours on voyage, 161. Draft, forward, 13; aft. 16.

COAL REPORT.

Remaining in Livingston	330	tons.
Remaining on board	165.5	"
Used on this round voyage	164.5	"

(Of which 47 tons used in Jamaica on Coast.)

SUMMARY.

Homeward—Hours used on voyage	161	Average Miles per hour... 10.3
Miles run	165.6	

O. J. SVENSSON, Captain.

1428 1427 1426 1425

Exhibit 61a.

ABSTRACT OF LOG of S. S.———. Crossed Bar at———. Left Livingston for New York 2d August.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engines.	Wind.	Weather.	Report of Time passing Islands and Lights, Stoppages, Remarks, Etc.
.....	1st day	.....	.....	.....	.....	.....	.....	75	64.1	.....	.....	
.....	2d "	.....	.....	.....	.....	.....	.....	77	64.5	.....	.....	
.....	3d "	.....	.....	.....	.....	.....	.....	77	65.1	.....	.....	
.....	4th "	.....	.....	.....	.....	.....	.....	77	65.1	.....	.....	
.....	5th "	.....	.....	.....	.....	.....	.....	77	65	.....	.....	
.....	6th "	.....	.....	.....	.....	.....	.....	75	64.8	.....	.....	
.....	7th "	.....	.....	.....	.....	.....	.....	75	64.9	.....	.....	
.....	8th "	.....	.....	.....	.....	.....	.....	75	64.8	.....	.....	

Total Miles, ———. Arrived at New York on Sunday 9/7, 1891. Total hours on voyage, 260.

Left Omoa, Honduras, 8th day of July, 1891, at——P. M. Draft, forward, 14 feet; aft, 16 feet.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engines.	Wind.	Weather.	Report of Time passing Islands and Lights, Stoppages, Remarks, Etc.
Thursday .	1st day	204	210	18° 44′	86° 9′	N. by E. ¾ E.	N. by E. ½ E.	75	64.1	N. O.	Stiff br'ze, high sea.	Left Omoa the 18th, 3 P. M.
Friday....	2d "	253	253	22° 42.5′	84° 30′	Var.	Var.	77	64.5	Var.	Var.	Passed St. Antonio the 10th, 5h 45m A. M.
Saturday..	3d "	280	258	24° 50′	80° 6.5′	"	"	77	65.1	"	"	" Havana Light the 10th, 11h 10m P. M.
Sunday ...	4th "	308	251	29° 37.7′	79° 28.7′	"	"	77	65.1	"	"	
Monday ..	5th "	.....	235	32° 38′	77° 5′	"	"	77	65	N. O.	Storm.	
Tuesday ..	6th "	308	248	37° 18′	73° 26.6′	"	"	75	64.8	S. O.	Var.	
Wed'sday.	7th "	201	201	.....	.....	"	"	75	64.9	S. S. W.	Foggy.	Passed Sandy Hook the 15th, 8h 0m A. M.
.....	8th "	1,554	1,656	.....	.....	.....	.....	.....	.....	.....	.....	

Total Miles, 1,656. Arrived at Bar at——A. M. on the 15th July, 1891. Total hours on voyage, 161. Draft, forward, 13; aft, 15.5.

COAL REPORT.

Remaining on last arrival in N. Y	165.5 tons.
Took in at New York	168 "
Total supplied	333.5 "

SUMMARY.

Homeward—Hours used on voyage	161	Average Miles per hour	10.3
Miles run	1,656		

Exhibit 62.

ABSTRACT OF LOG of S. S. CERES. Voy. 2, left New York 18th July, 1891, at P. M., crossed Bar at 8 P. M., Saturday 18th of July.
Draft forward, 11 feet; aft, 16½ feet.

Day of Week.		Distance run to noon. By Observ'n.	Distance run to noon. By Engines.	Lat. at Noon.	Long. at Noon.	COURSES. By Compass.	COURSES. Made good.	Lowest pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time passing Islands and Lights, Stoppages, Remarks, Etc.
Sunday....	1st day	....	155	38° 1′	74° 29′	S by W ¼ W	"	78	64.4	South.	Fresh br.	Passed Sandy Hook the 18th, 8h P. M.
Monday...	2d "	247	245	34° 29′	76° 11′	Var.	"	78	65	"	"	" Cape Hatteras the 20th, 6h 50m A. M. Stopped 1 hour for engine.
Tuesday..	3d "	259	259	31° 46′	79° 35′	"	"	75	64.5	Var.	Var.	" " Fear the 20th, 11h 0m P. M.
Wedn'day	4th "	250	258	28° 38′	78° 22′	"	"	76	64.2	"	"	" " Canaveral the 22d, 12h 0m noon.
Thursday.	5th "	228	259	25° 17′	80° 10′	"	"	76	64.4	"	"	" Jupiter Inlet the 22d, 10h 5m P. M.
Friday....	6th "	260	259	23° 17′	83° 50′	"	"	75	64	"	"	" American Shoal the 23d, 9h 0m P. M.
Saturday..	7th "	283	263	20° 34′	86° 1′	"	"	72	63.6	"	"	" St. Antonio the 24th, 11h 0m P. M.
Sunday...	8th "	.....	344	.....	.....	"	"	70	62	"	"	" Half Moon buoy the 26th, 6h 45m A. M.
.....	9th "	.....	.....	.....	.....	.....	.....	72	63.5	.....	.....	" Cape Three Points.

Total Miles, 2,027; arrived at Livingston, Jamaica, at 5 P. M., on Sunday, July 26th, 1891. Total hours on voyage, 190.

Left Livingston, Sunday, August 2d, 1891, at 3 P. M. Draft forward, 125 feet; aft, 16 feet.

Day of Week.		Distance run to noon. By Observ'n.	Distance run to noon. By Engines.	Lat. at Noon.	Long. at Noon.	COURSES. By Compass.	COURSES. Made good.	Lowest pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time passing Islands and Lights, Stoppages, Remarks, Etc.
Monday...	1st day	.....	201	18° 6′	86° 57′	Var.	Var.	75	62.4	East.	Fresh br.	Passed Cape Three Points the 2d of July, 4h 5m P. M.
Tuesday..	2d "	265	265	22° 6′	85° 0′	"	"	75	61.4	N. E.	"	Passed St. Antonio 4th of July, 10h 20m A. M.
Wedn'day	3d "	280	260	24° 17′	80° 53′	"	"	75	61.3	"	"	
Thursday.	4th "	340	267	29° 34′	79° 28′	"	"	72	61	Var.	Var.	Passed Jupiter Inlet July 6th, 0h 30m A. M.
Friday....	5th "	280	262	33° 17′	76° 22′	"	"	70	61	"	"	
Saturday..	6th "	300	262	37° 21.5′	73° 30′	"	"	72	62.2	"	"	
Sunday...	7th "	210	210	.....	.....	"	"	75	63.4	.....	.....	Passed Sandy Hook the 9th Aug., 6h 30m A. M.
Monday...	8th "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	

Total Miles, 1,725; arrived at Bar at 6h 30m on Sunday, August 9th, 1891. Total hours on voyage, 159.5. Draft forward... aft....

JAMAICA HARBOR AND COAST LOG.

Left.....for.....at M. on.....
Arrived at.....at..M. on.....
Left.....for.....at...M. on.....
Arrived at.....at...M. on.....

Left.....for.....at....M. on.....
Arrived at.....at....M. on.....
Left.....for.....at....M. on.....
Arrived at.....at....M. on.....

COAL REPORT.

Remaining on last arrival in Livingston	134 tons.
Took under the trip	118 "
Left in New York	16 "
Total supplied	"
Remaining on board	"
Used on this round voyage	"

(Of which .. Tons used in Jamaica).

SUMMARY.

Outward—Hours used on voyage	191	Average Miles per hour ... 10.6
Miles run	2,027	
Homeward—Hours used on voyage	159.5	Average Miles per hour ... 10.8
Miles run	1,725	
Round—Hours used at Sea		Average Miles per hour ... 10.7
Miles run		

O. J. SVENSSON, Captain.

1436 1435 1434 1433

359

Exhibit 63.

ABSTRACT OF LOG of S. S. "CERES," Voy. 3. Left Dock Tuesday, August 18th, 1891, at P. M. Crossed Bar at 8h 35m P. M same day. Draft, forward, 12 ft. 6 in.; aft, 16 ft. 8 in.

Day of Week.		Distance run to noon. By Observ'n.	Distance run to noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made Good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time Passing Islands and Lights, Stoppages, Remarks, etc.
Weds'day	1st day	.....	165	37° 46.5′	74° 39′	S. by W.	S. by W.	73	63.2	Var.	Fine.	Passed Barnegat the 19th, 0h 45m A. M.
Thurs.	2d "	.....	259	34° 19.7′	76° 20′	Var.	Var.	75	63.8	N. O.	"	" Hatteras the 20th, 4h 45m A. M.
Fri.	3d "	.....	260	31° 22.3′	79° 55.7′	"	"	74	64.1	S. O.	"	" Frying Pan Shoals the 20th, 8h 0m P. M.
Sat	4th "	.....	262	27° 22.9′	80° 8.2′	South.	South.	75	64.4	South.	"	" Canaveral the 22d, 5h 40m A. M.
Sun.	5th "	.....	206	24° 32.5′	81° 16′	Var.	Var.	73	63.9	S. E.	Cloudy.	" Sombrero the 23d, 10h 35m A. M.
Mon.	6th "	.....	243	22° 26.1′	84° 59.7′	"	"	72	63.5	West.	"	" Sand bar the 23d, 4h 40m P. M.
Tues.	7th "	.....	264	18° 41.5′	86° 25′	S. by W.	S. by W.	72	63.5	West.	Fine.	" San Antonio the 24th, 3h 10m P. M.
Wednes.	8th "	.....	240	.....	.....	Var.	Var.	74	64.8	Var.	Var.	" Three Points the 26th, 8h 45m P. M.

Total miles, 1,969; arr'd at Livingstone at 9h 45m A. M. on Wednesday 26/8, 1891. Total hours on Voy., 181h 40m.

Left Puerto Cortes, Tuesday, Sept. 1st, 1891, at 8h 25m A. M. Draft forward, 13 ft.; aft, 16 ft.

Day of Week.		Distance run to noon. By Observ'n.	Distance run to noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made Good.	Lowest Pressure of Steam on Boilers	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time Passing Islands and Lights, Stoppages, Remarks, etc.
Tuesday ..	1st day	35	35	16° 25.4′	87° 45′	N. by E.	N. by E.	77	63.7	N. E.	Fresh br.	Passed Cabellos Point the 1st, 8h 35m A. M.
Wednes...	2d "	260	255	20° 17′	85° 49′	"	"	76	65.2	N. E.	"	
Thurs.....	3d "	264	264	23° 27.3′	83° 6.4′	Var.	Var.	76	65.1	Var.	Var.	" St. Antonio the 2nd, 9h 40m P. M.
Fri.....	4th "	320	265	26° 58.3′	79° 39′	"	"	76	65.2	"	"	" Carysfort the 4th, 3h 40m A. M.
Sat.....	5th "	304	263	31° 31.3′	78° 13′	"	"	75	64.7	"	"	
Sun.....	6th "	289	259	35° 0.9′	74° 33.6′	"	"	76	65.2	Ost.	Gale of wind with heavy sea.	
Mon.....	7th "	360	354	39° 4′	74° 28.5′	"	"	78	65.	"	.....	Passed Sandy Hook the 7th Sept., 8h 15m P. M.
Tues.....	8th "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Total Miles, 1,675; arrived at Bar at 8h 15m P. M. on Sept. 7th, 1891. Total hours on Voy., 155h 50m. Draft forward, 13 ft.; aft, 15 ft.

JAMAICA HARBOR AND COAST LOG.

Left Livingston for coast and Belise at 3 P. M. on Wednesday 26/8.
Arrived at Belise at 8h A. M. on Friday 28/8.
Left Belise for Ceiba at 4h P. M. on Friday 28/8.
Arrived at Ceiba at 5h A. M. on Saturday 29/8.

Left Ceiba for Coast at 1h P. M. on Saturday 29/8.
Arrived at Livingston at 8h A. M. on Monday 30/8.
Left Livingston for Puerto Cortes at 1h A. M. on Tuesday 1/9.
Arrived at Puerto Cortes at 6h A. M. on Tuesday 1/9.

COAL REPORT.

Remaining on last arrival in N. Y.	16	Tons.
Took in at New York	310	"
" "		"
Total supplied	326	"
Remaining on board	17	"
Used on this round voyage	309	"

(Of which 45 tons used on Coast.)

SUMMARY.

Outward—Hours used on Voy.	181½	Avg. Miles per hour	10.9
Miles run	1,969		
Homeward—Hours used on Voy.	155¾	Avg. Miles per hour	10.8
Miles run	1,675		
Round—Hours used at Sea		Avg. Miles per hour	10.85
Miles run.			

O. J. SVENSSON, Captain.

Exhibit 64.

ABSTRACT OF LOG of S. S. "CERES." Voyage 4. Left Dock Thursday, September 10th, 1891, at 9h 45m A. M. Crossed Bar at 11h 45m A. M. same day. Draft forward, 11 ft. 8 in.; aft, 17 ft. 2 in.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made Good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time Passing Islands and Lights, Stoppages, Remarks, etc.
Friday	1st day	.....	262	36° 15′	74° 54′	S. and W.	S. and W.	76	65.9	Var.	Fine.	Passed Barnegat Sept. 10th, 3h 30m P. M.
Saturday..	2d "	.....	260	33° 14′	78° 7′	Var.	Var	77	65.9	East.	"	" Hatteras, Sept. 11th, 5h 50m P. M.
Sunday ...	3d "	.....	261	29° 38′	80° 16′	"	"	74	64.7	Var.	Var.	
Monday...	4th "	.....	263	25° 40′	80° 4′	"	"	74	64.6	"	"	" Jupiter Inlet Sept. 14th, 3h 25m A. M.
Tuesday...	5th "	.....	264	23° 24′	83° 27′	"	"	73	64.2	N. E.	"	" Sand key Sept. 15th, 2h 15m A. M.
Wed'sday.	6th "	.....	260	20° 25′	85° 44′	"	"	74	63.9	"	Fine.	" St. Antonio Sept. 16th, 2h 30m A. M.
Thursday.	7th "	.....	257	16° 42′	87° 45′	S. by W.	S. by W.	74	63.8	"	"	" Half Moon kay Sept. 17th, 9h 5m A. M.
Friday	8th "	.....	90	.....	.....	.....	.....	74	63.	.....	.....	" Cor. Three points Sept. 17th, 7h 15m P. M.

Total Miles, 1,917; arrived at Livingston at 8h 30m P. M. on Thursday, Sept. 17th, 1891. Total hours on Voyage, 176h 45m.

Left Loper Wednesday, Sept. 23d, 1891, at 2h P. M. Draft forward, 12 feet; aft, 16.9 feet.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made Good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time Passing Islands and Lights, Stoppages, Remarks, etc.
Thursday.	1st day	240	240	19° 16′	85° 48′	N. by E.	N. by E.	75	64.	E. N. E.	Fresh.	Wind with sea breaking over.
Friday.....	2d "	270	260	22° 7′	84° 5′	Var.	Var.	74	64.4	Var.	"	Passed St. Antonio Sept. 25th, 3h 5m A. M.
Saturday..	3d "	320	256	25° 40′	79° 49′	"	"	76	64.9	"	"	" Carysfoot Sept. 26th, 9h 35m A. M.
Sunday ...	4th "	324	253	30° 47′	79° 33′	"	"	74	64.9	"	"	High N. W. sea and swell.
Monday...	5th "	300	241	33° 38′	75° 29′	"	"	73	63.8	"	"	" " "
Tuesday...	6th "	270	252	37° 32′	73° 42′	"	"	73	63.5	"	"	" " "
Wed'sday.	7th "	.....	206	.....	.....	"	"	73	63.0	"	"	Passed Sandy Hook Sept. 30th, 6h 30m A. M.
Thursday.	8th "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Total Miles, 1,708; arrived at Bar at 6h 30m A. M. on Wednesday 30/9, 1891. Total hours on Voyage, 160½. Draft forward, 12 ft.; aft, 16.9.

JAMAICA HARBOR AND COAST LOG.

Left Livingston for Ceiba at 9h P. M. on Friday, Sept. 18th.
Arrived at Ceiba at 8h A. M. on Saturday, Sept. 19th.
Left Ceiba for Truxillo at 9h A. M. on Saturday, Sept. 19th.
Arrived at Truxillo at 2h P. M. on Saturday, Sept. 19th.

Left Truxillo for Ceiba at 2h P. M. on Sunday, Sept. 20th.
Arrived at Ceiba at 6h P. M. on Sunday, Sept. 20th.
Left Ceiba for Lopes at 8h A. M. on Tuesday, Sept. 22d.
Arrived at Lopes at 9h A. M. on Tuesday, Sept. 22d.

COAL REPORT.

Remaining on last arrival in N. Y	17	Tons.
Took in at New York.....	350	"
" "		"
Total supplied.....	367	"
Remaining on board	72	"
Used on this round voyage	295	"

(Of which 31 tons used on coast.)

SUMMARY.

Outward—Hours used on Voy.....	176¾	Avg. Miles per hour....	10.85
Miles run.....	1,917		
Homeward—Hours used on Voy.	160½	Avg. Miles per hour ...	10.7
Miles run.....	1,708		
Round—Hours used at Sea.....		Avg. Miles per hour....	
Miles run.....			

O. J. SVENSSON, Captain.

1444 1443 1442 1441

Exhibit 65.

ABSTRACT OF LOG of S. S. CERES, Voyage 6. Left Dock Wednesday, October 18th, 1891, at 8h 30m P. M. Crossed Bar at 10h 30m P. M. same day. Draft, forward, 11 feet; aft, 17 feet 5 in.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time passing Islands and Lights, Stoppages, Remarks, Etc.
Thursday	1st day	...	146	38° 9′	74° 25′	S. by W.	S. by W. ½ W.	75	64.6	N. W.	Fine.	Passed Barnegat Oct. 29th, 2h 30m A. M.
Friday	2d "	...	270	34° 21′	76° 24′	Var.	Var.	76	65.7	Var.	"	" Hatteras Oct. 30th, 4h 30m A. M.
Saturday	3d "	...	268	31° 30′	79° 52′	"	"	76	64.6	East.	"	" Frying Pan Shoal Oct. 30th, 8h 15m P. M.
Sunday	4th "	...	261	27° 48′	80° 12′	"	"	76	64.9	"	"	" Cape Canaveral Nov. 1st, 6h 55m A. M.
Monday	5th "	...	265	24° 38′	81° 5′	"	"	74	63.6	"	"	" Jupiter Inlet Nov. 1st, 5h 0m P. M.
Tuesday	6th "	...	264	22° 26′	84° 53′	"	"	74	63.5	N. E.	Var.	" Sand Kay Nov. 2d, 4h 0m P. M.
Wed'sday	7th "	...	257	19° 7′	86° 31′	S. by W.	S. by W.	74	63.5	"	"	" St. Antonio Nov. 3d, 4h 0m P. M.
Thursday	8th "	...	264	....	....	Var.	Var.	73	63.9	Var.	"	" Cape Three Points Nov. 5th, 11h 30m A. M.

Total Miles, 1,995; arrived at Livingston, Jamaica, at 12h 30m P. M.. on Thursday, Nov. 5th, 1891. Total hours on voyage, 182.

Left Livingston Friday, Nov. 27th, 1891, at 0h 40 m A. M. Draft forward, 13′ 6″; aft, 15′ 8″.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time passing Islands and Lights, Stoppages, Remarks, Etc.
Friday	1st day	...	116	17° 2′	87° 25′	Var.	Var.	75	63.8	North.	Variable	and very heavy rain.
Saturday	2d "	...	248	20° 19′	85° 37′	N. by E. ½ E.	N. by E. ½ E.	75	63.1	N. E.	Var.	Set sails.
Sunday	3d "	...	252	23° 34′	83° 24′	Var.	Var.	76	63.4	Var.	"	Passed St. Antonio Nov. 28th, 10h 0m P. M.
Monday	4th "	...	226	25° 48′	79° 55′	"	"	76	62.5	North.	Storm.	" Town Rock Nov. 30th, 10h 20m A. M.
Tuesday	5th "	...	190	29° 48′	79° 20′	N. ¼ E.	N. ¼ E.	76	62.6	"	"	" Jupiter Inlet Nov. 30th, 7h 10m P. M.
Wed'sday	6th "	...	238	32° 32′	76° 50′	"	"	76	64.1	N. E.	Moderati	ng with heavy N. E. swell.
Thursday	7th "	...	256	36° 15′	73° 45′	"	"	76	63.4	Var.	.....	" " " "
Friday	8th "	...	286	.....	.....	"	"	73	64.2	....	.....	Passed Sandy Hook Friday, Dec. 4th, 2h 0m P. M.

Total Miles, 1,822; arrived at Bar at 2h P. M on Friday, Dec. 4th, 1891. Total hours on voyage. 181. Draft, forward, 13 feet; aft, 15 feet.

JAMAICA HARBOR AND COAST LOG.

Left Livingston for Puerto Cortes at 4h A. M. on Friday, Nov. 6th.
Arrived at Puerto Cortes at 8h 30m A. M. on Friday, Nov. 6th.
Left Puerto Cortes for Zappotillas, Jamaica, at 2h P. M. on Friday, Nov. 6th.
Arrived at Zappotillas at 4h P. M. on Friday, Nov. 6th.

Left Zappotillas for Coast at 1h P. M. on Nov. 19th.
Had the anchors down 36 times at different places.
Arrived at Livingston at 2h P. M. on Nov. 26th.

COAL REPORT.

Remaining on last arrival in New York	12 tons.
Took in at New York	400 "
Total supplied	412 "
Remaining on board	12 "
Used on this round voyage	400 "

(Of which 101 tons used on Coast.)

SUMMARY.

Outward—Hours used on voyage	182	Average Miles per hour 10.96
Miles run	1,995	
Homeward—Hours used on voyage	181	Average Miles per hour 10.06
Miles run	1,822	
Round—Hours used at Sea		Average Miles per hour ....
Miles run		

O. J. SVENSSON, Captain.

Exhibit 66.

ABSTRACT OF LOG of S. S. "CERES." Voy. 7. Left Dock Saturday, December 12th, 1891, at 8h 0m A. M. Crossed Bar at 10h 0m A. M. same day. Draft forward, 15 ft. 6 in.; aft, 17 ft. 6 in.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made Good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time Passing Islands and Lights, Stoppages, Remarks, etc.
Sunday....	1st day	.....	290	35° 59′	74° 14′	S. by W.	S. by W.	75	64.1	West.	Fair.	Passed Barnegat, Dec. 12th, 1h 30m P. M.
Monday...	2d "	.....	262	32° 4′	74° 43′	"	"	75	64	"	Variable.	
Tuesday...	3d "	.....	264	28° 3′	74° 55′	South.	South.	75	64.2	Vari	able.	
Wed'sday.	4th "	.....	252	24° 11′	74° 22′	S. ¾ E.	S. ¾ E.	76	64.8	Variable &	heavy sea.	" St. Salvador, Dec. 16th, 6h 30m P. M.
Thursday.	5th "	.....	265	20° 13′	74° 7′	Vari	able.	74	64	Variable &	heavy sea.	" Cape Maysi (Cuba), Dec. 17th, 11h 30m A.M.
Friday....	6th "	.....	250	.....	.....	.....	.....	73	63.8	.....	.....	" Three Point (Jamaica), Dec. 18th, 10h 0m A. M.
.....	7th "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	8th "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Total Miles, 1,585; arrived at Kingston, Jamaica, at 11h 30m A. M. on Friday, Dec. 18th, 1891. Total hours on Voy., 144.

Left Bocas del Toro, Columbia, Saturday, Jan. 2d, 1892, at 2h 0m A M. Draft forward, 12 ft. 8 in.; aft, 15 ft. 0 in.

Day of Week.		Distance run to Noon. By Observ'n.	Distance run to Noon. By Engines.	Lat. at Noon.	Long. at Noon.	Courses. By Compass.	Courses. Made Good.	Lowest Pressure of Steam on Boilers.	Average No. Rev. of Engine.	Wind.	Weather.	Report of Time Passing Islands and Lights, Stoppages, Remarks, etc.
Saturday..	1st day	.....	118	10° 59′	82° 40′	.....	N. by W.	75	63.9	N. E.	Variable w	ith heavy rain showers.
Sunday...	2d "	.....	262	14° 48′	83° 10′	.....	Var.	77	64.9	"	Var.	Passed Cape Gracias a Dios, Jan. 3d, 1h 30m P. M.
Monday...	3d "	.....	228	17° 53′	84° 44′	.....	N. by W. ½ W.	75	65.7	N. by E.	Stormy wi	th heavy breaking seas.
Tuesday...	4th "	.....	268	22° 1′	85° 16′	.....	"	75	64	N. E.	Moderat'g.	
Weds'day.	5th "	.....	253	26° 18′	86° 40′	.....	"	77	62.1	Variable w	ith sign of	Norther.
Thursday..	6th "	.....	279	.....	.....	.....	"	76	65.1	Gales of w	inds from	the North quarter. Stopped for Pilot at Mobile bar, Jan. 7th, 4h 0m P. M.
.....	7th "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	8th "	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Total Miles, 1,430; arrived at Bar at 4h P. M. on Thursday, Jan. 7th, 1892. Total hours on Voy., 134. Draft forward, 12½ ft; aft, 14 ft.

JAMAICA HARBOR AND COAST LOG.

Left Kingston for Bocas del Toro at 4h P. M. on Saturday, Dec. 19th.
Arrived at Bocas del Toro at 9h A. M. on Tuesday, Dec. 22nd
Left Bocas del Toro for Port Limon at 3h A. M. on Wednesday, Dec. 23d.
Arrived at Port Limon at 9h A. M. on Wednesday, Dec. 23d.

Left Port Limon for Greytown at 3h A. M. on Thursday, Dec. 24th.
Arrived at Greytown at 11h A. M. on same day.
Left Greytown for Bocas del Toro at 10h P. M. on same day.
Arrived at Bocas del Toro at 10h A. M. on Friday, Dec. 25th.

COAL REPORT.

Remaining on last arrival in N. Y.	33	Tons.
Took in at New York	386	"
" "		"
Total supplied	419	"
Remaining on board	65	"
Used on this round voyage	354	

(Of which 106 Tons used from Jamaica and Coast.)

SUMMARY.

Outward—Hours used on Voy	144	Avg. Miles per hour	11.0
Miles run	1,585		
Homeward—Hours used on Voy	134	Avg. Miles per hour	10.7
Miles run	1,430		
Round—Hours used at Sea		Avg. Miles per hour	
Miles run			

O. J. SVENSSON, Captain.

1452 1451 1450 1449

G. WESSELS & CO.,
IMPORTERS OF TROPICAL FRUIT
and
General Commission Merchants,
69 FRONT STREET,
New York.

Exhibit 68.

ABSTRACT OF LOG S. S. CERES, on a voyage from Pensacola to Bocas del Toro. Voyage No.....

Sailed from Pensacola 27/2. Draught, forward, 15 feet 8 in. Draught, aft, 17 feet 2 in. Cargo, Coals and Lumber.
Arrived Greytown 3/3. " " " " "
Sailed from Bocas 14/3. " " " " "
Arrived New York, 23/3. " " 12 feet " " 14 feet 6 in. "

Date.	Days.	Course by Compass.	Course made good	Winds.	Lat.	Long.	Dist. Run.	Temps. Forward. 6 A. M.	Noon.	6 P. M.	Temps. Aft. 6 A. M.	Noon.	6 P. M.	Sail Set.	REMARKS.
27/2	Saturday..	Var.	Var.	Var.	Left	Pensaco	la Febr	uary 27 th, 5h 3	0m	P. M.	Pa	ssed th	e Bar	s ame da	y, 7h 30m P. M.
28/2	Sunday ...	"	"	"	27° 30'	86° 38'	186'							No.	
29/2	Monday ..	"	"	"	23° 35'	85° 52'	272'							"	Variable winds and weather.
1/3	Tuesday...	"	"	"	19° 40'	84° 36'	269'							Yes.	Passed St. Antonio February 29th, 11h 25m P. M.
2/3	Wed'sday.	"	"	East.	15° 48'	83° 40'	273'							"	Fresh wind.
3/3	Thursday.	"	"	"	11° 56'	83° 23'	269'								Anchored at Greytown March 3d, 6h 0m P. M.

Commenced to discharge coals and lumber Friday, March 4th, 6h 0m A. M. Discharged from all cargo Tuesday, March 8th, 4h 0m P. M. Commenced loading coffee, hides and rubber same day. Loading finished Wednesday, 4h 0m P. M.

HARBOR AND COAST JOURNAL.

Left Greytown Wednesday, March 9th, 8 o'clock, P. M.
Arrived Bocas del Toro, March 10th, 7h 30m A. M.
Left " " " " 1h 40m P. M.
Arrived Chiriqui Grande " " 5h 30m "
Left " " " " 6h 30m "
Arrived Aspinwall Friday " 11th. 10h 0m A. M.
Left " " " " 4h 30m P. M.
Arrived Bocas del Toro, Saturday, March 12th, 7h 30m A. M.
After which we called at several places in Chirique and Columbus Lagoon.

REPORT ON COAL VOYAGE NO.....

	Tons.	Tons.
Coal on board on arrival at Pensacola	25	
Took on board at "	163	
Consumed on trip to Greytown	90	
Consumed on Coast Service	72	
Took on board at Greytown	161	
Consumed on trip to New York	142	
Total consumed on voyage		204
Coal on board on arrival at New York	42	

FROM BOCAS DEL TORO TO NEW YORK.

14/3	Monday...	N N E ½ E	N N E ½ E	.....	Left	Bocas de l	Toro	Mon	day	March	14 th,	11h	0m P. M.	No.	Stormy weather with high sea.
15/3	Tuesday ..	"	"	N E	10° 51'	80° 45'	132	85	83	82	.....	.....	.....	"	" " " " "
16/3	Wed'sday.	"	"	N N E	13° 43'	78° 29'	242	83	82	82	.....	.....	.....	"	" " " " "
17/3	Thursday.	"	"	N E by N	16° 30'	76° 18'	251	82	81	80	.....	.....	.....	Yes.	Passed Cape Maysi Friday, March 18th, 2h 0m P. M.
18/3	Friday.....	"	"	N N E	19° 54'	74° 16'	270	81	81	80	.....	.....	.....	"	" Watling's Island, March 19th, 11h 45m A. M.
19/3	Saturday .	Var.	Var.	Var.	24° 8'	74° 20'	251	80	80	80	.....	.....	.....	"	Moderate.
20/3	Sunday ...	North.	North.	"	27° 58'	74° 30	242	65	66	65	.....	.....	.....	.....	" Foggy.
21/3	Monday ..	N ¼ E	N ¼ E	North.	32° 10'	74° 27'	267	58	59	58	.....	.....	.....	.....	Passed Sandy Hook L't Wed., Mar. 23, 10h 15m A. M.
22/3	Tuesday ..	North.	North.	"	36° 33'	74° 14'	272	56	56	56	.....	.....	.....	.....	Anchored at Staten Island. " " 11h 50m A. M.
23/3	Wed'sday.	"	"	Var.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Outward—Total Distance Run, 1,336 Miles. Total No. Hours, 118. Total Consumption Coal, 90. Average Speed, 11.3. Average Consumption, 18.
Homeward— " " 2,210 " " " 203. " " 142. " " 10.9. " " 16.7.

O. J. SVENSSON.

1460 1459 1458 1457

G. WESSELS & CO.,
IMPORTERS OF TROPICAL FRUIT
and
General Commission Merchants,
69 FRONT STREET,
New York.

Exhibit 69.

ABSTRACT OF LOG S. S. "CERES" on a voyage from New York to Colon and retour — Voyage No. 3.

Sailed New York, 26/3. Draught forward, 12 ft. Draught aft, 17 ft. 1 in. Cargo, General.
Arrived Colon, 4/4. " " 12 ft. " " 16 ft. 0 in.
Sailed from Colon, 11/4. " " 14 ft. " " 17 ft. 0 in. Cargo, Fruit and Nuts.
Arrived New York, 19.

Date.	Days.	Course by Compass.	Course made good	Winds.	Lat.	Long.	Dist. Run.	Temps. Forward. 6 A. M.	Noon.	6 P. M.	Temps. Aft. 6 A. M.	Noon.	6 P. M.	Sail. Set.	REMARKS.
March 27th	Sunday ...	South.	South.	East.	38° 20′	73° 39′	127	Left New York, Saturday,				Mar. 26 10h 30m		P. M.	Passed Scotland L.sh., Sunday, Mar. 27, 0h 30m A. M.
" 28th	Monday ...	"	"	North.	34° 2′	73° 7′	261								Stormy, heavy seas, bunker coals shift'g, heavy list
" 29th	Tuesday ...	S. to W.	S. to W.	"	30° 39′	72° 6′	266								" " " " [seas break'g over.
" 30th	Wed'sday.	"	"	"	26° 43′	72° 0′	249								Moderating to fresh br.
" 31st	Thursday.	"	"	N. E.	23° 17′	74° 20′	261							Yes.	" "
April 1st	Friday	Var.	Var.	"	19° 20′	74° 30′	267							"	Passed Castle Isl'd, Thursday, Mar. 31, 6h 45m P. M.
" 2d	Saturday..	"	"	"	15° 27′	76° 24′	273							"	" Navassa Isl'd, Friday, April 1, 5h 40m P. M.
" 3d	Sunday ...	"	"	"	11° 56′	78° 42′	274							"	A strong current took us past Colon at night, had
" 4th	Monday..						225							"	to turn back.
							2200								Anchored at Colon, Monday, April 4, 11h 0m A. M.

HARBOR AND COAST JOURNAL.

Left Colon, Monday, April 4th, 4h 20m P. M. } Very heavy rain, when
Arr. Bocas del Toro, Tuesday, " 5th, 11h 0m A. M. } outside Bocas, 5h 0m A. M.
Left " " 5th, 8h 40m P. M.
Arr. Greytown, Wed'sday, " 6th, 11h 0m A. M.
Left " Thursday, " 7th, 8h 20m P. M.
Arr. Colon, Friday, " 8th, 8h 0m P. M. and anchored there.
Shifted into the mouth of the canal and commenced loading fruit, Saturday, April 9th, 5h 0m A. M.
Finished loading, Sunday, April 10th, 3h 0m P. M. Shifted out on the stream for loading ivory and cocoanuts.

REPORT ON COAL VOYAGE NO. ....

	Tons.	Tons.
Coal on board on arrival at New York	42	
Took on board at New York	390	
		432
Consumed on trip to Colon	145	
Consumed on Coast Service	52	
Took on board at		
Consumed on trip to New York	155	
Total consumed on voyage		352
Coal on board on arrival at	80	

FROM COLON TO NEW YORK.

April 11th	Monday...	Left Colon	Monday, A	pril 11th,	0h 30m P. M.										Fresh gales with heavy sea breaking over.
" 12th	Tuesday...	N. N. E.	N. N. E.	N. N. E.	12° 11′	78° 4′	231	80°	80°	80°	80°	80°	80°		" " "
" 13th	Wed'sday.	"	"	"	15° 18′	76° 1′	245	80	80	80	80	80	80		" " "
" 14th	Thursday.	"	"	"	18° 36′	74° 34′	252	79	79	79	79	79	78		Passed Navassa Isl'd, Thursday, Apr. 14, 6h 45m A. M.
" 15th	Friday	Var.	Var.	"	22° 52′	74° 24′	257	75	76	73	74	75	70		" Watlings Isl'd, Friday, Apr. 15, 7h 0m P. M.
" 16th	Saturday..	Nor'd.	Nor'd.	Nor'd.	26° 56′	74° 22′	264	70	71	70	69	70	69		Variable stiff br. with confused seas.
" 17th	Sunday ...	"	"	"	30° 45′	74° 32′	250	64	66	64	62	64	62		" " moderating.
" 18th	Monday...	"	"	Var. & S.W	34° 54′	74° 26′	262	58	60	58	58	58	57	Yes.	Fresh br. and stormy.
" 19th	Tuesday...	N. by E.	N. by E.	Var.	38° 51′	74° 15′	247	56	57	56	60	61	60		Heavy gale of wind blowing from various quarters.
							108	54	54	54	54	54	54		Passed Scotland Lt. sh., Tuesday, April 19, 9h 30m P. M. Anchored at Staten Island, 11h 15m P. M.

Outward—Total distance run, 2,200 miles. Total No. hours, 202. Total consumption coal, 145. Average speed, 10 9. Average consumption.....
Homeward—" " " 2,116 " " " " 201. " " " 155. " " 10.6.

O. J. SVENSSON.

G. WESSELS & CO.,
IMPORTERS OF TROPICAL FRUIT
and
General Commission Merchants,
69 FRONT STREET,
New York.

Exhibit 70.

Voyage No. 49.

ABSTRACT OF LOG S. S. CERES, on a voyage from New York to Colon. Cargo, General Cargo.

Sailed from N. Y. April 23d. Draught, forward, 13 feet. Draught, aft, 17 feet.
Arrived Colon May 1st. " " " " " 16 "
Sailed from Colon " 7th. " " 14 feet 8 in. " " 17 " "
Arrived N. Y. " 16th. " " " " 16 " 5 in. "

Date.	Days.	Course by Compass.	Course made good	Winds.	Lat.	Long.	Dist. Run.	Temps. forward. 6 A. M.	Noon.	6 P. M.	Temps. Aft. 6 A. M.	Noon.	6 P. M.	Sail Set	REMARKS.
24/4.....	Sunday ...	Var.	Var.	N N E	35° 56'	73° 4'	306	Left	Dock,	N. Y.,	Saturd	ay, Ap	ril 22d,	No. 1h 0m	A. M. Crossed bar same day 5h 20m A. M.
25/4.....	Monday ..	South.	South.	N E	32° 11'	72° 36'	262	.....	.....	.....	.....	.....	.....	.....	Fresh breeze with fine weather.
26/4.....	Tuesday ..	"	"	Var.	28° 5'	73° 56'	265	.....	.....	.....	.....	.....	.....	Yes.	" " "
27/4	Wed'sday	Var.	Var.	East.	24° 21'	73° 59'	248	.....	.....	.....	.....	.....	.....	"	Passed Watling's Island Wed.. Apr. 27, 1h 50m P.M.
28/4.....	Thursday .	"	"	"	20° 25'	74° 10'	266	.....	.....	.....	.....	.....	.....	"	" Cape Maysi Thursday " 28, 1h 15m "
29/4	Friday	"	"	"	16° 46'	75° 39'	258	.....	.....	.....	.....	.....	.....	"	Fresh breeze with fine weather.
30/4 ...	Saturday..	"	"	"	13° 33'	77° 21'	258	....	.....	.....	.....	.....	.....	No.	" " " "
1/5.....	Sunday ...	"	"	"	9° 53'	79° 26'	262	.....	.....	.....	.....	.....	.....	"	
....	.....	.....	.....	.....	.....	... ...	55	Arrived at Colon and anchored, Sunday, May 1st, 5h 20m P. M.							

HARBOR AND COAST JOURNAL.

Left Colon Monday, May 2d, 10h 0m A. M.
Arrived Greytown Tuesday, " 3d, 1h 0m P. M.
Left " Wednesday, " 4th 8h 20m "
Arrived Colon Thursday " 5th 8h 30m "

REPORT ON COAL VOYAGE No.....

	Tons.	Tons.
Coal on board on arrival at New York	80	
"	304	
Took on board at	132	
Consumed on trip to Colon	34	
Consumed on Coast Service		
Took on board at		
Consumed on trip to New York	138	
Total consumed on voyage		304
Coal on board on arrival at New York		80

FROM COLON TO NEW YORK.

8/5.....	Sunday ...	Var.	Var.	N N E	11° 44'	78° 37'	150	76	76	76	76	76	76	Left Colon Saturday, May 7th, 7h 45m P. M.
9/5	Monday...	"	"	N E	15° 15'	76° 41'	241	"	"	"	"	"	"	Fresh breeze with heavy rain.
10/5.....	Tuesday ..	"	"	"	17° 52'	75° 0'	244	"	"	"	"	"	"	" " " "
11/5.....	Wed'sday	"	"	"	21° 17'	74° 21'	253	70	70	70	70	70	70	Passed Cape Maysi Wed'sday, May 11, 5h 45m A. M.
12/5.....	Thursday .	"	"	"	25° 26'	74° 21'	253	68	68	68	68	68	68	" Watling's Isl., Thurs., " 12, 4h 30m "
13/5.....	Friday.....	North.	North.	Var.	29° 25'	74° 16'	245	"	"	"	"	"	"	Variable winds and weather.
14/5.....	Saturday..	"	"	"	32° 56'	74° 32'	233	65	65	65	65	65	65	" " "
15/5.....	Sunday ...	"	"	"	37° 7'	74° 32'	230	63	64	63	64	64	Yes.	" " "
16/5.....	Monday...	"	"	"	.....	.....	330	62	62	62	62	62	.....	Passsd Scotland L. Sh. Monday, May 16, 9h 0m A. M.

Outward—Total Distance Run, 2,180 Miles. Total No. Hours, 204. Total Consumption Coal, 132. Average Speed. 10.6. Average Consumption....
Homeward— " " 2,080 " " " 205. " " 138. " " 10.1.

O. J. SVENSSON.

1468 1467 1466 1465

1469

Exhibit 78.

VOYAGE No. 1.—OUTWARD.

New York to Colon.

Left New York 10.30 P.M., March 26th, 1892.
Arrived at Colon 11 A.M., April 4th, 1892.
True distance, according to daily positions.

Date.	At Noon.	Knots.	Lat. N.	Long. W.	
March 27th,	"	124	38°.20′.4	73°.39′	Acct.
" 28th,	"	265	31 .02	73 .07	"
" 29th,	"	237	30 .10	71 .57	Chro.
" 30th,	"	202	26 .48	71 .57	"
" 31st,	"	250	23 .17	74 .20	"
April 1st,	"	248	19 .20	74 .30	"
" 2d,	"	256	15 .27	76 .24	"
" 3d,	"	250	11 .56	78 .42	"
" 4th,	"	172	At Colon.		

1470

Total ... 2,004

Passage, about 216 hours.
Average speed per hour, 9.27 + knots.

JAMES A. CROSSMAN.

1471

VOYAGE No. 1.—HOMEWARD.

Colon to New York.

Left Colon 12.30 noon, April 11th, 1892.
Passed Scotland Light ship 9.40 P. M., April 19th, '92.
True distance, according to daily positions.

Date.	At Noon.	Knots.	Lat. N.	Long. W.	
April 12th,	"	203	12°.11′	78°.04′.30	Chro.
" 13th,	"	220	15 .18	76 .01	"
" 14th,	"	246			Acct.
" 15th,	"	235	22 .52	74 .24	"
" 16th,	"	304	27 .56	74 .22	Chro.
" 17th,	"	170	30 .45	74 .30	"
" 18th,	"	251	34 .54	74 .26	"
" 19th,	"	247	38 .51	74 .15	"
" " Arrived off Scotland Light Ship.....		95	At 9.40 P. M., April 19th.		

1472

Total ... 1,971

Passage, about 201 hours.
Average speed per hour, 9.8 + knots.

JAMES A. CROSSMAN.

Voy. No. 2.—Outward. 1473

New York to Colon.

Passed Scotland Light Ship 5.20 A. M., April 23rd, 1893.

Arrived at Colon 5.20 P. M., May 1st, 1893.

True distance, according to daily positions.

Date.	Noon.	Knots.	Lat.	Long.	Time.	
Apr. 23,	"	56	39°.36′ N.	73°.50′ W.	Chro.	
" 24,	"	221	35 .56	73 .05.30	"	
" 25,	"	220	32 .11	73 .36	"	
" 26,	"	246	28 .05	73 .20	"	1474
" 27,	"	228	24 .21	73 .55.30	"	
" 28,	"	243	20 .25	74 .10	"	
" 29,	"	237	16 .46	75 .29	"	
" 30,	"	221	13 .33	77 .21	"	
May 1,	"	251	9 .53	79 .26	"	
"	" to Colon 45, at 5.20 P. M., May 1st, 1893.					

Total....1,967

Passage, about 204 hours.

Average speed per hour, 9.64 + knots. 1475

James A Crossman.

Voy. No. 2.--Homeward.

Colon to New York.

Left Colon 7.45 P. M., May 7th, 1893.

Passed Scotland Light ship 9 A. M., May 16th, 1893.

True distance, according to daily positions.

Date.	Noon.	Knots.	Lat.	Long.		
May 8,	"	162	11°.44′ N.	78°.37′ W.	Acct.	
" 9,	"	238	15 .15	76 .41	"	1476
" 10,	"	240	17 .52	75 .00	Chro.	
" 11,	"	162	21 .17	74 .21	"	
" 12,	"	249	25 .26	74 .21	"	
" 13,	"	239	29 .27	74 .16	"	
" 14,	"	210	32 .56	74 .22.15	"	
" 15,	"	250	37 .07	74 .02	"	
" 16, 9 A.M.		200, passed Scotland L. Ship.				

1,950

Passage, about 216 hours.

Average speed per hour, 9 knots.

James A. Crossman.

1477 DISTANCE FROM NEW YORK TO COLON.

	Miles.
New York City to Watlings Island	1,000
Watlings Island to Bird Rock	75
Bird Rock to Fortune Island	18
Fortune Island to Castle Island	27
Castle Island to Cape Maysi (Cuba)	116
Cape Maysi to Navassa Island	124
Navassa to Colon	610
1378 Total	1,970

Exhibit 79.

HIRAM TREAT, Pilot.
NEW YORK, July 15, 1892.

Stmr. *Ceres*,
Captain and Owners.
To the Pilot Boat *Elbridge T. Gerry, No. 2*, Dr.
1479 To pilotage from sea 15-1/2 feet $52.39
Transporting,
Detention,
Paid.

Received payment, 1170
Charge Disbts.
S. S. *Ceres* No. 1 E.
E.

WM. J. McMANUS, Agent.
(In Margin.) Office 15 State Street.
1480 (Pinned on above.)
Pilot's Order.
G. WESSELS & Co.
Will please pay bearer the pilotage of S. S. *Ceres* from sea.
Draught of water 15 feet 8 in.
Boarded
Transporting
Detention of Pilot

O. J. SVENSSON, Captain.

1481

Exhibit 80.

New York, April 23d, 1892.

S. S. *Ceres*,
Captain and Owners,
To J. Ronan Pilot Boat No. 5

Dr.

For Pilotage to sea	16 feet	$37.28
" Pilotage from Quarantine		
" Hauling Stream Transporting		
" Detention		

1382

Office 309 Water Street.
Telephone Call, "Cortlandt 641." Charge Disbts.
Check to J. W. Avery, Agent.

Received payment,
S. S. *Ceres* No. 8.
E.

(Endorsed on face.)
1481 May 23.
(Pinned to above)

1483

Pilot's Order.
Vessel's name, S. S. *Ceres*.
Consignee, Messrs. G. Wessels & Co.
Draught of Water, 16 feet.
to Sea
Boarded
O. J. Svensson, Captain.

1484

1485

Exhibit 81.

NEW YORK, April 19th, 1892.

S. S. *Ceres*,
Captain and Owners,
To F. KELLY Pilot Boat No. 5

Dr.

For Pilotage from sea 16 feet $54.08
" Pilotage from Quarantine
" Hauling Stream Transporting
1486 " Detention
Office 309 Water Street.
Telephone Call, "Cortlandt 641." Charge Disbts.
Check to J. W. AVERY, Agent.

Received payment,
S. S. *Ceres* No. 8.
E.

(Endorsed on face.)
1481 May 23.
(Pinned to above)
1487 Pilot's Order.
Vessel's name S. S. *Ceres*.
Consignee, Messrs. G. WESSELS & Co.
Draught of Water, 16 feet.
Boarded at sea.
O. J. SVENSSON, Captain.

1488

1489

Exhibit 82.

CHAS. G. BONINGTON, Pilot.
NEW YORK, May 16, 1892.

Stmr. *Ceres*
Captain and Owners,
To the Pilot Boat *Elbridge T. Gerry, No. 2*, Dr.
To pilotage from sea 16 feet $54.08
Transporting,
Detention,

1490

1500
June 6/92.
Paid.

Received payment,
Chgd. Disb.
Ceres 9
E.

WM. J. MCMANUS, Agent.
(In margin.) Office 15 State Street.
(Pinned on above.)

1491

Pilot's Order.

Messrs. G. WESSELS & Co.
Will please pay bearer the pilotage of S. S. *Ceres* from sea.
Draught of water 16 feet
Boarded
Transporting
Detention of Pilot

O. J. SVENSSON, Captain.

1492

Exhibit 83.

Copy made November 17, 1893.

Journal from May 11, 1892, to June 11. Page 37

Day	Date	Rig	Vessel	Dock	Where	Remarks, Recommendations	Progress of Repairs
ednesday	May 18	S.S.	*Ceres*	26th St.	Brooklyn	Surveyed Boilers, found good, except furnaces in starbd Boiler, Slightly drawn, $\frac{1}{4}$ $\frac{1}{4}$ recom. going on, and if increasing, rings on	

Journal from April 29, 1893, to May 13. Page 52

Day	Date	Rig	Vessel	Dock	Where	Remarks, Recommendations	Progress of Repairs
riday	May 12	S.S.	*Ceres*	Cramps	Dock	Surveyed Main Boilers, found them all right, 1 Blade propeller broken, Sternbearing worn, recom. new wood Sternbearings, Spare Propeller blades put on new bolts for one.	

This is a *fac simile* of Surveyor's Journal at Phila.

John Haug,
Surveyor to Lloyds Agents.

1497

Exhibit 85.

K. NEW YORK, October 25th, 1893.

Messrs. G. WESSELS & Co.,
218 Washington St., New York.

DEAR SIRS:

Your favor of the 23rd inst. is at hand.

S. S. *Ceres.* On the first trip of this vessel she took 6311 feet of Pitchpine Lumber and 585 gross tons of coal for cargo. The vessel took 216 tons of 1498
coal besides the above in her bunkers. On her second trip, she took 52,979 feet of Pitchpine Lumber and 561 tons of coal, having in her bunkers besides the above, 188 tons. We understand that she carries about 860 tons dead weight.

Yours very truly,
W. D. MUNSON.

1499

Exhibit 86.

TIME CHARTER, G. F.

W. W. HURLBUT & Co.,	Cable Address,
Steamship Agents and Shipbrokers,	"Dogbastian,"
New York.	Watkins' Code,
	Scott's Code.

Form I.

THIS CHARTER PARTY, made and concluded in the 1500
City of New York the 25th day of May, 1892, between W. W. Hurlbut & Co., Agents of the good Iron Screw Steamship *Ceres* of Malmo, of tons gross register, and tons net register, having engines of nominal horse power, provided with proper certificate for hull and machinery, and guaranteed to class 100 A1, at Lloyds, and Messrs. H. Dumois & Co., merchants of the City of New York.

Witnesseth, that the said owners agree to let, and the said charterers agree to hire the said steamship

1501 from the time of delivery at New York for a period of one month, having cleaned bottom before leaving Europe, being understood that the steamer is to leave if in ballast, no later than and if with cargo to some of the West India Islands or Central America, no later than she being, on her delivery at Charterer's dock, ready to receive cargo, and being tight, staunch, strong and in every way fitted for the service, having water ballast, steam winches and donkey boiler, with
1502 capacity to run all the steam winches at one and the same time, including necessary dunnage (and with full complement of officers), seamen, engineers and firemen for a vessel of her tonnage, to be employed in carrying lawful merchandise including petroleum or its products, in cases, and passengers so far as accommodations will allow, but any expense to suit U. S. passenger inspection to be borne by between port and ports in Canada and/or other British possessions not north of River St. Lawrence (steamer to leave the St.
1503 Lawrence by the 31st of October), and/or the United States of America and/or West Indies and Gulf of Mexico, and/or Carribean Sea, and/or Central America, and/or South America, not south of the River Platte, as the charterers or their agents shall direct on the following conditions:

1. That the owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel, also for all engine-room and deck stores, and maintain her
1504 in a thoroughly efficient state in hull and machinery for and during the services, guaranteeing to maintain the boilers in a condition to bear a working pressure of at least 60 pounds (and this pressure to be carried continuously) during the whole term of this charter, and to victual and provide for all passengers in the best manner according to their class, charterers paying at the rate of 4/ sterling per day for each first class passenger.

2. That the charterers shall pay and provide for all the coal, port charges, pilotages, agencies and commis-

sions, and the charterers shall accept and pay for all 1505
coal in the steamer's bunkers on delivery, at the rate of $4.00 per ton, and the Owners shall, on expiration of this charter, pay for all coal left in the bunkers at the current market price at the respective port where she is delivered to them. It is understood that the steamer must have sufficient coal in bunkers on delivery to take her to New York or Boston.

3. That the charterers shall pay for the use of said vessel (£600) six hundred pounds Br. Stlg. lump sum, per calendar month, commencing from the time 1506
the vessel is entered at the Custom-House and placed with clear holds at charterer's disposal, and at and after the same rates for any part of a month, hire to continue from the time specified for terminating the charter until her delivery to owners (unless lost) at a port in the United States.

4. Payment of said hire to be made in Cash in New York at the rate of $4.85 per £ sterling, half-monthly in advance from the date of delivery of steamer, and in default of such payment the owners shall have the 1507
faculty of withdrawing the said steamer from the service of the charterers without prejudice to any claim they, the owners, may otherwise have on charterers in pursuance of this Charter; cash for ship's necessary disbursements, if desired by master, but not exceeding £250 monthly, to be supplied by Charterers to the captain at current rate of exchange, subject to a commission of 2½ per cent. to cover all charges and captain's receipt to be taken as part payment of the freight. 1508

5. That should the steamer be on her voyage towards the port of return delivery at the time a payment of hire comes due, said payment shall be made for such a length of time as owners, agents and charterers, or their agents, may agree upon as the estimated time necessary to complete the voyage, and when the steamer is delivered to owners' agent, any difference shall be refunded by steamer or paid by charterers, as the case may require.

6. That the cargo or cargoes shall be laden and/or dis-

charged with the assistance of the steamers's crew and tackle, in any dock or at any wharf or place that the charterers or their agents may direct, provided the steamer can always safely lie afloat at all times of tide.

7. That the whole reach of the steamer's holds, decks and all places of loading and passenger accommodation of the steamer, (not being more than she can reasonably carry and stow), shall be at the charterers' disposal, reserving only proper and sufficient space for the ship's officers, crew, tackle, provisions, stores and fuel.

8. That the captain shall prosecute his voyages with the utmost dispatch, and take every advantage of wind by using the sails with a view to economize fuel, and shall render all possible assistance with ship's crew and boats.

9. That the captain, although appointed by the owner, shall be under the orders and directions of the charterers as regards employment, agency or other arrangements; and the charterers hereby agree to indemnify the owners from all consequences or liabilities that may arise from the captain signing Bills of Lading or otherwise complying with their orders and directions.

10. That if the Charterers shall have reason to be dissatisfied with the conduct of the captain, officers or engineers, they shall make such complaint in writing to an agent in New York specially appointed by owners, who shall have full power to act on their behalf, and, if necessary, dismiss any of the officers should they find the complaints made by the charterers are justified and proven.

11. That the Charterers shall have permission to appoint a super-cargo who shall accompany this steamer and be furnished free of charge with first-class fare and accommodations, and to see that the voyages are prosecuted with the utmost dispatch; the crew to follow his directions and instructions in putting on and taking off hatches, ventilation, etc.

12. That the master shall be furnished from time to

time with all requisite instructions and sailing direc- 1513
tions, and shall keep a full and correct log of the voy-
age or voyages, which are always to be open to in-
spection of the charterers or their agents.

13.

14. That in the event of loss of time from deficiency of men or stores, break down of machinery or damage preventing the working of the steamer for more than twenty-four hours at sea, the payment of hire shall cease until she be again in an efficient state to resume her service, and should she in consequence put into any 1514
port other than that to which she is bound, the port charges and pilotages at such port shall be borne by steamer's owners ; but should the vessel be driven into port or to anchorage by stress of weather or from any accident to the cargo, such detention or loss of time shall be at the charterers' risk and expense ; also if any loss of time from crew or stores not being on board in time, or from repairs to hull or machinery, which are for owners' account, not being complete after cargo and coals are on board and hour of sailing has been 1515
fixed by charterers, and notice given to captain, the time lost is for the steamer's account.

15. That should the vessel be lost, any hire paid in advance and not earned (reckoning from the date of her loss) shall be returned to the Charterers with interest from date of loss. The Act of God, the King's Enemies, Fire, Restraints of Princes, Rulers and People, and all other dangers and accidents of the seas, rivers, machinery, boilers, and steam navigations throughout this Charter Party always excepted. 1516

16. That should any dispute arise between Owners and Charterers, the matters in dispute shall be referred to three persons in New York, one to be appointed by each of the parties hereto, and the third by the two so chosen ; their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of Court.

17. That the Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this charter and the Charterers shall have a lien upon

the ship for all moneys paid in advance and not earned.

18. Ship's bottom to be kept properly cleaned and steamer to be docked whenever Captain and Charterers may think it necessary; but at least once in every four months. And payment of the hire to be suspended until she is again in proper state for the service.

19. Captains are to report at Charterers' office at least once a day.

20. Steamer to work night and day if required by charterers, and all steam winches to be at charterers' disposal during loading and discharging. Steamer to provide men to work winches both day and night as required, charterers agreeing to pay for any night work incurred, at the current local rate.

21. That the steamer be provided with awnings throughout during the whole of this charter, also with wind sails for each hatch, besides stationary ventilators placed at convenient places throughout the deck as charterers may direct.

22. That the steamer shall be provided with loose planks, 2 to 2½ inches thick, to make a platform or deck all through the vessel's hold, and also provided with beams for such temporary platform or deck to rest on, building the same strong enough to hold tiers of fruit.

23. That the crew is not allowed under any circumstances, to carry Bananas or other merchandise for their own account. Donkey boiler not to be worked when carrying Bananas.

24. That should the steamer have an iron deck, the owners shall agree to have the same sheathed all through with 2½ inch planks, or otherwise charterers to do it at owners' expense.

25. In case Cuba should quarantine steamers from United States Ports, or in case the United States should quarantine steamers from ports of Cuba on account of cholera, charterers to have option of cancelling this Charter Party on giving Owners or Agents fifteen (15) days' notice of such intention (3 days' observation in

port of Cuba where vessel is bound for, not to count as 1521
quarantine).

26. That on account of the perishable nature of the cargoes that this steamer is intended to carry, she is not allowed to stop to pick up any wreck or in any way assist, or tow any vessel, especially when by so doing she is liable to be detained, only in order to save human life.

27. That a commission of 5% upon the gross amount of this charter, and usual freight brokerage, payable by steamship and owners, is due 1522
to W. W. HURLBUT & CO., upon signing hereof, steamship lost or not lost. And also upon any continuation or extension of this charter or on sale of vessel.

28. Penalty for nonperformance of this contract, estimated amount of damages.

By Owners' Authority.

(Sgd.) W. W. Hurlbut & Co.,
Agents.

1523

Witness to the signature of }
the Agents for Owners, }
(Sgd.) W. H. Bennett.

(Sgd.) H. Dumois & Co.

Witness to the signature of }
the Charterers, }
(Sgd.) W. H. Bennett.

We certify the above to be a true copy of the original Charter Party in our possession. 1524

W. W. Hurlbut & Co.,
Brokers.

1525

Exhibit 87.

1893.

Draught for Dumois.

1893.	Banes,	July 19th	12′ 10 x 15′	mean 13′	.11″
	"	Aug. 2d	12′ 10 x 15′	" 13′	.11″
	Baracoa,	Aug. 17th	13′ x 15′ .3″	" 14′	.1⅓
	Banes,	Sept. 5th	12′ 6″ x 15′	" 13′	.9

1892.

1526

Banes,	June 7th	12′ .10″	& 16′ .0	14.5
"	June 21st	13′ .0	& 15′ .0	14.0
Baracoa,	July 17th	13′ .0	& 15′ .0	14.0
"	Aug. 5th	12′ .6″	& 15′ .6	14.0

1893.

Banes,	July 6th	12′ .10″	& 15′ .0	13.11
"	June 22d	12′ . 5″	& 15′ .3	13.10
"	" 7th	12′ . 0	& 15′ .6	13. 9
"	May 23d	12′ . 0	& 15′ .6	13. 9
"	Apr. 27th	13′ . 0	& 15′ .0	14. 0
"	" 11th	12′ . 0	& 14′ .6	13. 3
"	Mar. 28th	13′ . 3	& 14′ .8	13. 4

1527

Exhibit 88.

10852 Apr. 16th
16101 May 3d
17192 June 12th
11974 " 27th
9366 July 11th

1528

14324	July 24th	12.10 15.
11911	Aug. 7th	do
14156	Aug. 24th	13. 15.3
9905	Sept. 10th	12.6 15.

1157.81

1529

Exhibit 89.

Letterhead of Hipolito Dumois & Co.

NEW YORK, Nov. 16, 1893.

TO WHOM IT MAY CONCERN:

This is to certify that S/S *Ceres* while under charter to us from June to August, 1892, and March to September, 1893, has given us entire satisfaction. We have found ventilation, awnings, and everything on board requisite for the fruit trade in perfect order. As 1530
regards to speed, she has, while running for us, even averaged over eleven knots at different times.

H. DUMOIS & Co.

1531

1532

1533 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS *et al.*

vs.

The Steamship "CERES" *et al.*

1534

THE SYDSVENSKA ANGFARTYGS AKTIEBOLAGET

vs.

GERHARD WESSELS *et al.*

Opinion.

IN ADMIRALTY—BREACH OF CHARTER PARTY.

1535 WING, SHOUDY & PUTNAM, for G. Wessels & Co.
CONVERS & KIRLIN, for the *Ceres*.

BROWN, J.:

The above libels were brought to recover damages upon a charter party; the first, for non-fulfillment of a guaranty of speed; the second, for charter hire and wrongful termination of the charter. I shall indicate briefly the grounds of my decision upon the points involved.

1536

1.—*Guaranty of speed.* The charter on its face, and all the circumstances, show that the original hire of the steamer had mainly in view the transportation of fruit cargo. In this business a certain speed is essential, and the knowledge of what is to be counted on is important. The guaranty was, that the steamer should "make an average speed under steam of not less than 11 knots per hour, *fruit* or *light-laden*, in moderate weather, and with good American coal," and the guaranty must be construed with reference to the

objects of the charter. The provision that it shall 1537
make an *average* speed shows clearly that it was a practical result that was looked at, and not merely the ship's *capacity* of attaining 11 knots an hour under the best possible conditions. It was intended to be a continuing guaranty that the average speed of 11 knots should be accomplished under the conditions stated; not indeed in spite of any faults of the charterers, but that in the absence of any faults or obstacles on their part, the owners should maintain the ship in a state of efficiency to accomplish that average speed. 1538

The evidence leaves no doubt that this speed was not maintained, and that the charterers never waived their objections on account of this defect. They complained of it from the first, and were constantly met by excuses, promises and hopes of improvement. During the last two voyages, which are the subjects of these suits, a speed of 11 knots was never attained, even for a day. The only question on this subject, therefore, is whether the conditions of the guaranty were complied with, as respects the weather, cargo 1539
and coal; and whether the failure to make 11 knots is to be ascribed to any fault of the charterers in the loading and trim of the ship. The excuse grounded upon bad coal was frivolous, as the evidence plainly shows; and as respects the weather, nothing further need be said than that the steamer did not make 11 knots even when the weather was most moderate and favorable.

2.—*Fruit or light-laden.* The controversy has been 1540
chiefly in regard to the *loading* of the vessel. The case is one in which the words "*light-laden*" must be construed in reference to the context and the word "fruit" immediately preceding. See Ins. Co. *v.* Hamilton, 12 App. Cas., 490; U. S. *v.* The Buffalo Park, 16 Blatch., 190; Fed. Cas. 14, 681; The *Viola*, 59 Fed., 635. The meaning is, that the ship shall make 11 knots laden with a fruit cargo, or with its equivalent, *i. e.*, when as light laden as with a fruit cargo, or one not more cumbersome, nor more unfavorable for

1541 speed. Much evidence has been given of the opinions of shipping men as to what the term "light-laden" means. Their diverse opinions, as well as their own testimony, shows that there is no standard or custom by which to determine the meaning of the term "light-laden" independently of its context; and I do not think the meaning of the phrase is to be arrived at in that way, or that any fixed proportion of a deep-laden cargo can be arbitrarily adopted. The defendants' witnesses mostly think that two-thirds of a deep or full
1542 load would be "light-laden." As respects the draft of the vessel, the only limit under this charter, as respects the guaranteed speed, is the draft of a full fruit cargo, *i. e.*, the draft with such a full fruit cargo as the vessel was capable of carrying. The charterer had a right to the full fruit-cargo draft; and whatever cargo he puts aboard, if that draft is not exceeded, the steamer is, I think, be deemed "light-laden" within the intent of this charter; and this is the view expressed by several competent witnesses.

1543 The libellant testifies that the *Ceres* will carry from 24,000 to 30,000 bunches of bananas; and an average weight of these would amount at least to upwards of 350 tons. The dead weight capacity guaranteed by the charter was 820 tons, including coal. On the first of the two voyages in suit, the steamer brought from Colon about 179 tons of bananas and about 138 tons of merchandise, or 344 tons in all. Besides this, she had on leaving Colon, 225 tons of coal on board, on the first voyage, and 218 tons on the last. As her con-
1544 sumption of coal on the trip from Colon was about 150 tons, the excess of coal for any contingencies of the voyage was 75 tons on the first voyage and 68 on the second. It is nowhere intimated that this was an excessive supply of coal for a purely fruit cargo. The steamer was, therefore, as I must find, weighted down with less cargo than the charterers were entitled to carry for a purely fruit cargo, and therefore did not transgress the condition of "fruit, or light-laden."

3.—*Trim and ballast.* A further excuse on the part

of the ship is, that there was so much weight of coal amidships, with the bananas above, that she was obliged to fill her two forward ballast tanks with water, amounting to 180 tons. I do not perceive, however, that this is material to the question, or that it affects the charterers' rights; for there is no intimation in the evidence that a less amount of ballast would have been needed had the cargo been wholly of bananas. The evidence shows, on the contrary, that upon both voyages, so much of the cargo as was not fruit consisted of heavy merchandise, such as coffee, cocoanuts, etc., all of which were put in the lower hold, rendering less ballast necessary than would have been needed for a purely fruit cargo of bananas. The variation from a purely fruit cargo was, therefore, in favor of the vessel. It was the ship's duty to take what ballast was necessary for a fruit cargo; and the weight of so much ballast as would be needed for a fruit cargo could not be counted in reckoning a "light-lading" any more than could be counted in a fruit cargo, so far as respects her guaranty of speed. Excluding the ballast, these two cargoes were less even than most of the claimant's witnesses admit to be "light-laden," viz., two-thirds of a dead weight cargo. 1545 1546 1547

The *trim* of the vessel, moreover, which is now made a subject of complaint, viz., that she was loaded too much by the stern, is not shown by the evidence to have been objected to by the master at the time. The charterers, or their supercargo, did indeed have the direction of the loading; but as the speed was one of the guaranties of the charter, and the deficiency in speed was frequently complained of, it was the master's duty, if he conceived that the proposed distribution of the cargo would affect the ship's speed unfavorably, to call attention to the subject at the time of loading, when as favorable a disposition of the cargo could have been made as the nature of the case would admit. Not having made any objection at the time when it could have been remedied, such an objection was waived, and the owners are equitably estopped from setting it up now. 1548

1549 It is unnecessary, therefore, to consider the precise details of the draft of the ship, or of the trim forward and aft, about which there is some conflict in the evidence, and even discordance in the ship's records. It is evident that neither the observations nor the records were made with exactness; and the register of the miles run, as given by the patent log, is still more inaccurate. The Lloyd's deep load line is immaterial; for even assuming the correctness of the captain's testimony as to the amount of water ballast taken on the
1550 two voyages from Colon, viz., 200 tons, of which I have some doubt, still this would make the total tonnage of cargo, coal and ballast on leaving Colon from 80 to 100 tons less than the dead tonnage guaranteed by the charter; so that on adding for a full cargo 8 to 10 inches more draft, we should have 16 feet 3 inches, or upwards as the expected draft for the guaranteed capacity, even if the mean draft from Colon was 15 feet 9 inches; and this intended draft of 16 feet 9 inches for a full deep-load capacity accords both with
1551 the scale delivered by the agents to the charterers, and with her actual draft on the subsequent voyage to Spain. The defendants cannot appeal to the Lloyd's deep load line as any excuse for non-compliance with the agreements and representations of the charter. The evidence indicates that the boilers and pipes were not in perfect condition, and that the chief engineer, for that reason, forbore "to drive the ship as in other trades." Whatever the reason, however, it seems to me clear that the ship did not make the guaranteed
1552 speed under the agreed conditions; and that the libellants had the right both to terminate the charter, as they did, for this breach, and to recover such damages, if any, as arose from it.

4.—*The lay-up clause.* The language of this clause is not that of a mere option. Section 18 requires docking at least once in every four months, during which hire shall cease. I think the intent of Sec. 28, declaring that the steamer "*is to lay up* for overhauling two weeks each year in winter, at time charterers

designate," was designed to give the charterers the 1553
right to designate the two weeks in winter when the vessel should be off pay, so as to suit the exigencies of their business; that this was also for the further purpose of securing perfect efficiency of the steamer during the subsequent months when she would be wanted to make as quick speed as possible; that the need of such overhauling in winter is assumed by the charter, and that the charterers were bound under the charter to expect, and therefore had the right to count on, an overhauling at such time during the winter as they 1554
should designate, and upon a cessation of pay during this period; that the owners could not defeat the charterers' arrangements as to the time for this overhauling and cessation of pay, by the claim that overhauling was unnecessary; and that the evidence does not prove that overhauling was unnecessary, but rather indicates that the subsequent two or three weeks' work upon the ship could have been done at the time designated by the charterers with improvement in her service. 1555

A decree may be entered in accordance with this opinion, and an order of reference, if the damages are not agreed on.

Dated, New York, April 7, 1894.

1556

1557

At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the U. S. Court Rooms in the City of New York, on the 21st day of May, 1894.

1558 Present—Hon. Addison Brown, Judge.

Gerhard Wessels and Charles T. Wessels

vs.

1559 S. S. "Ceres" and the Sydsvenska Angfaktygs Aktiebolag.

This cause having been heard on the pleadings and proofs of the respective parties, and having been argued by the respective advocates, and due deliberation having been had, now on motion of Wing, Shoudy & Putnam, proctors for libellants,

1560 It is ordered, adjudged and decreed that the libellants recover herein against the steamship *Ceres*, her engines, &c., and the respondent, the damages sustained by the libellants, by reason of the matters set forth in the libel, with costs, and that said steamship, her engines, &c., be condemned therefor.

And it is further ordered that it be referred to Enos N. Taft, a Commissioner of this Court, to take proof and ascertain the amount of the libellants' damages herein, and report the same to this Court with all convenient speed. 1561

ADDISON BROWN.

[Endorsed:]—Interlocutory Decree.—Filed May 22, 1894.

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1563

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS *et al.*

vs.

The Steamship "CERES."

Reference to Ascertain Damages.

Before E. N. Taft, Esq., U.S. Commissioner.

1566

NEW YORK, June 13, 1894.

APPEARANCES:

HARRINGTON PUTNAM, Esq., for the Libellants.
J. P. KIRLIN, Esq., for the Claimants.

Mr. Putnam produces the opinion, order and notice of reference.

1567 NORMAN W. MOWBRAY, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Putnam:

Q. You have been examined in this case both by deposition and on the trial before the Court, have you not? A. Yes, sir.

Q. You are now one of the officers of the steamship *Allianca?* A. Yes, sir.

Q. And expect to go to sea on her when she goes? A. Yes.

1568 Q. What position do you hold on her? A. Third officer.

Q. You were acting as a supercargo for the Messrs. Wessels on these two voyages, the 8th and 9th of the *Ceres*, were you not? A. Yes, sir.

Q. What experience have you had in the West India trade, and particularly in the fruit trade, aside from these two voyages? A. I was second mate in one of the Wessels' steamers from Jamaica for about three months. She carried fruit. And I have made about

thirty voyages in the steamers of the Pacific Mail Line carrying fruit. 1569

Q. Have you also been employed by other steamship lines? A. Yes, I have been going to sea since I was fifteen years old, in almost every steamship line out of New York.

Q. What years were you with the Pacific Mail? A. 1892, and about four years before that; I think about 1888.

Q. And in those voyages did they bring bananas from Aspinwall to New York? A. Yes, every voyage. 1570

Q. And it was your duty as an officer to see the bananas as they were brought and as they were delivered? A. Part of my duty, yes.

Q. Have you done anything to refresh your recollection as to the dates of voyage No. 8 and voyage No. 9 of the *Ceres*? A. Yes.

Q. How have you refreshed your recollection as to dates? A. By overhauling the certified copy of the translation of the *Ceres* log.

Q. Exhibit 71, is it not? A. Yes, sir. 1571

Q. What is the number of knots from the Scotland Lightship to Colon, if you know? A. 1,952.

Q. That is by the usual route that steamers take between those points? A. Yes.

Q. Do you know what date the *Ceres* left here on voyage No. 8? A. It was March 26th, 1892.

Claimants' counsel objects on the ground that the only damages here sought to be recovered are damages to bananas, not for loss of time. Taken subject to objection. 1572

Q. What time did she arrive at Colon, if you remember? A. April 4th.

Q. And what hour? You may refer to your memorandum? A. 11 A. M.

Q. She was how many hours on that outward voyage? A. 203.

Claimants' counsel objects to all questions relating to the outward voyages on the ground already stated. Taken subject to objection.

1573 Q. How many hours would it have taken at 11-knot speed? A. 177½.

Q. So that the difference between them would be the hours over-time? A. 25½ hours.

Q. When did she leave Colon? A. April 4th at 4.20.

Q. Went to what place? A. Bocas del Torra, in the United States of Columbia.

Q. At what time did she arrive there? A. April 5th at 5.11 A. M.

Q. Do you know whether any bananas were ordered
1574 to be cut for the *Ceres* while she was in Colon? A. Yes, the bananas were ordered to be cut and ready on the morning of the 8th of April.

Q. How do you know that? A. The captain told me and the agent told me. The captain told me he had ordered them.

Claimants' counsel moves to strike out the answer as hearsay, also because it was no part of the master's duty as master to buy bananas or order bananas to be cut; he was specially
1575 employed by the Messrs. Wessells to do that for them.

Q. You were there at the time? A. I was aboard the vessel.

By the Commissioner:

Q. This was knowledge you got at the very time it occurred? A. Yes, sir.

Motion denied.

1576

By Mr. Putnam:

Q. Do you know what time the steamer left Bocas? A. April 5th at 8.40 P. M.

By Mr. Kirlin:

Q. What memorandum are you testifying from? A. The memorandum that I copied off from the log, or rather made up from the log.

Q. From the certified copy here? A. Yes, sir.

By Mr. Putnam: 1577

Q. And arrived at Greytown at what time? A. Wednesday, April 6, 11.30 A. M.

Q. What is the distance from Bocas to Greytown? A. 130 knots.

Q. How many hours would that take at 11-knot speed? A. Not quite 12 hours; $11\frac{9}{11}$.

Q. When did she leave Greytown? A. Thursday, April 7th, at 8.20 P. M.

Q. And arrived at Colon when? A. Friday, April 8, at 8 P. M. 1578

Q. Did she load any cargo on Friday, April 8th? A. No.

Q. How long did she remain at Colon before beginning to load cargo? When did she begin to load cargo? A. Commenced to load the morning of the 9th.

Q. Where did she remain before the morning of the 9th? A. Laid at anchor, off the town.

Q. Didn't enter the harbor proper? Didn't enter the place where the fruit was, did she, before morning? A. No, sir. 1579

Q. In case she had made 11 knots from Colon until she got back to Colon, making the distance which you have given, what time would she have arrived at Colon on April 8th, allowing for the time that she actually remained in port?

Objected to on the grounds previously stated.

A. She would arrive on Friday, the 8th, at 3 P. M.

Q. Would there have been any difficulty then for her to have begun loading right off? A. No, if she 1580 had got there any time before dark she would have commenced to load before night.

Objected to on the ground that the Court has not held that this guarantee provided that the vessel should make 11 knots between fixed points on the chart, but only found that she was to make 11 knots through the water; and this question is directed to ascertaining how long it would have taken her to go from point to point,

1581 distances fixed as he has given them over the chart. Taken subject to objection.

Q. When the steamer came in on Saturday morning, did you see the fruit there? A. Yes.

Q. It was already cut and waiting on the shore? A. Yes.

Q. In case the steamer had begun loading on Friday, when would she have been able to have taken in her cargo and sailed?

1582 The same objection and ruling.

Q. She should have been finished not later than Saturday at midnight.

Q. When did she actually get loaded and leave with the cargo aboard? A. Monday, the 11th, at noon.

Q. And she sailed from Colon a little after noon on Monday? A. Yes.

Q. What time? A. It was just about noon.

Q. When did she actually arrive back to the Scot
1583 land lightship? A. On Tuesday night, April 19th, at 9.40 P. M.

Q. And she reached Quarantine at what time? A. 11.45 P. M. the same night.

Q. At 11-knot speed how many hours should she take for the distance from Colon to Scotland Lightship? A. 177½.

Objected to on the ground that there was no undertaking that the vessel should make 11 knots between fixed points, only per hour through
1584 the water. Taken subject to objection.

Q. What was the actual number of hours that she used? A. 201.

Q. So that made the difference of over-time of 23½ hours? A. Yes, sir.

Q. In case the vessel had loaded at Colon beginning on Friday at 3 P. M., when the fruit was ordered, and sailed Saturday night, when would she have arrived in New York at 11-knot speed? A. She would have got in on Monday morning, the 18th, at 4 o'clock.

The same objection and ruling.

Q. When did she actually begin working at the discharge of her cargo; when she did arrive? A. Wednesday morning, the 20th. 1585

Q. You noticed the weather on the voyage out and back, I suppose? A. Yes, sir.

Q. Was there any weather on the voyage out and back that in your experience would retard the speed of a steamship like the *Ceres*? A. No, sir; none.

Q. How often on voyage 8 did you personally inspect the fruit? A. Every day two or three times; sometimes I would go down oftener than that. 1586

Q. Did you examine the fruit on Sunday, the 17th? A. I did.

Q. And also on Monday, the 18th? A. Yes.

Q. How was the fruit then? A. It was in fair condition on the night of Sunday.

Q. By fair condition, what do you mean? A. In good marketable condition. There was no smell about it, and there was very few bunches which had started coloring.

1587

By the Commissioner:

Q. What do you mean by that? The bananas are picked green, and as they start to become ripe, they become yellow.

By Mr. Putnam:

Q. And there was no odor at that time? A. No, sir.

Q. Were they still in what you consider a merchantable condition of fruit in New York at that time? A. Yes, sir.

Q. How were they on the following day, Monday the 18th? A. There was no odor noticeable on Monday until along about noon. 1588

Q. What was the condition of the bananas in the afternoon of Monday and on Tuesday? A. They ripened fast after that.

Q. What was their condition when the vessel arrived at the wharf in New York? A. In bad shape.

Q. What proportion of them in your judgment were so decayed as to be unmerchantable?

1589 Objected to as not proper evidence. Withdrawn.

By the Commissioner:

Q. When you say they were in bad shape, what was the evidence of that? A. The smell in the hold of the ship where the bananas were stowed.

By Mr. Kirlin:

Q. What was the smell? A. I don't know that I can describe it. I have no doubt you have smelt rot-
1590 ten fruit, decayed fruit.

By the Commissioner:

Q. That was the smell of decayed fruit? A. Yes, sir; there is a peculiar smell about bananas that you can always tell when they are decaying.

By Mr. Putnam:

Q. It indicates fermentation? A. Yes, sir.

Q. Which is first in the progress of decay, the smell
1591 or changing of color, or are they at the same time? A. They would start to color before they decay.

By the Commissioner:

Q. That change of color does not indicate decay, does it? A. No.

Q. It indicates ripening? A. Ripening.

Q. When the decay does set in and you have the smell, is there any further change of color? A. Yes, the bananas that are out of sight are the ones that are apt to decay first

1592 Q. I had reference to the appearance of it. Would the appearance show the decay? A. Yes.

Q. What would be the change in color then? A. They would change from yellow to brown.

Q. The difference between the yellow banana and the red banana is a difference in kind, isn't it? A. Yes.

Q. You don't speak of the red when you speak of the brown? A. No.

Q. It is the white banana becoming brown? A. Yes.

By Mr. Putnam: 1593

Q. In your experience in the bringing of bananas does the decay become more rapid after 7½ or 8 days out? A. Yes, sir; it does.

Q. Were you on board the *Ceres* when the cargo, was being discharged on the 20th? A. Yes, I was.

Q. And saw the bananas as they were taken out? A. Yes.

Q. Did you also see stalks taken out without any fruit on them? A. Yes.

Q. But you didn't keep any count of them yourself? 1594
A. No, I didn't count the stalks.

Q. Was there an unusual quantity? A. Yes.

Q. I think you stated that if she left Colon on Saturday night at midnight and made the average of 11 knots up to New York, the time that she would have arrived would have been Monday, at 4 A. M.? A. Yes, sir.

Q. Are you correct about that, or have you allowed for the time of detention at Quarantine? A. I meant at Quarantine. You can't figure on how long the de- 1595
tention will be at Quarantine.

Q. Have you figures on how many hours she would be coming up? A. Yes; 177½.

Q. You were also acting in the same way on the voyage No. 9, were you not? A. Yes, sir.

Q. The vessel left there on voyage No. 9 at what hour on April 23d?

Claimants' counsel objects to all questions in relation to the outward voyage, or to any voya- 1596
ges between ports prior to the actual lading of these bananas on board, for reasons previously given. Taken subject to objection.

A. Left at 5.20 A. M.

Q. And she arrived at Colon on what day and hour? A. Sunday, May 1, 5.20 P. M.

Q. And therefore took 204 hours, didn't she? A. Yes, sir.

Q. And the time at 11 knots is 177½, as you have previously testified? A. Yes, sir.

1597 Q. That makes a difference as the hours over-time of— A. 26½ hours.

Q. She left Colon on what day? A. Monday, May 2 at 10 A. M.

Q. And arrived at Greytown when? A. Tuesday, the 3d at 1 P. M.

Q. And that distance you have already testified was 245 knots? A. 245 knots.

Q. The hours at 11 knots would be how many? A. 23 3/11.

1598 Q. The actual time that she was engaged was how long? A. 27 hours.

Q. Making a difference of how much? A. 4 8/11.

Q. She left Greytown what day? A. Wednesday, May 4th, at 8.20 P. M.

Q. And arrived in Colon? A. Thursday, May 5th, at 8.30 P. M.

Q. Allowing the same time that she actually lay in port, makes what difference from the arrival back to Colon? A. 1 8/11 hours.

1599 Q. When did she begin loading her cargo at Colon for New York on the 9th voyage? A. Friday, May 6th.

Q. When did she get away from Colon? A. Saturday, night, about 8 o'clock.

Q. Allowing the actual time that she lay in port in Greytown, suppose that she had made the 11 knots going from Colon to Greytown and returning to Colon, when would she have arrived back at Colon? A. Thursday May 5th, at 1.15 P. M.

1600 Q. Instead of that she arrived Thursday night at 8.30? A. Yes, sir.

Q. Did she do anything that night? A. No, sir.

Q. Lay at anchor? A. Lay at anchor.

Q. Why was that? A. Got there too late to do anything

Q. In case she had arrived on Thursday at 1.30 when would she have been able to have loaded? A. She could have started yesterday.

Q. And would have got cargo in when, taking the

same time that she did take to load her cargo? A. 1601
She would have finished by 9.30 Friday, the 6th.

Q. When would she have sailed? A. She could have sailed immediately afterwards.

Q. Was the fruit all ready for her in that voyage? A. It was.

By the Commissioner:

Q. Do you mean ready for her at the time the vessel should have arrived? A. Yes, sir.

1602

By Mr. Putnam:

Q. How do you know when the fruit was cut and placed in readiness for the steamer? A. I can't tell that except what the agent told me. The agent said that the fruit was there ready for us when it was ordered.

Objected to as hearsay.

Q. How was the fruit taken on that voyage No. 9 on the ship? A. Taken from railroad cars from the wharf. 1603

Q. Do you know when you saw the railroad cars there? A. We could see them there when we got in.

Q. Suppose the *Cross* had sailed on Friday at 9.30 P. M. when would she have arrived at New York at 11-knot speed?

Objected to.

Claimants' counsel claims the proper ground is to take the speed she made hour by hour and estimate the difference between that and 11 knots. Taken subject to objection. 1604

A. She was due in New York Saturday, May 14th, at 9.15 A. M.

Q. At what place would that be, at Quarantine or at the dock? A. That would be at the lightship.

Q. When did she actually arrive here at New York on the 9th voyage? A. Monday, May 16th, at 9 A. M.

Q. 9 A. M. was at what place? A. The lightship.

1605 Q. When did she get up to her wharf and begin discharging? A. At noon on that day.

Q. Was the cargo all out that day? A. Yes, it was all out that day.

Q. How was the weather on that voyage, both out and back? A. Fine weather.

Q. Did you inspect the cargo on the 9th voyage the same as you did on the 8th voyage? A. Yes, sir.

Q. Did you look at it every day? A. Every day; several times a day.

1606 Q. Did you make any examination of the cargo on the 14th, which would be Saturday? A. Yes, sir.

Q. How was the cargo then? A. It was in good shape.

Q. When did you first see any signs of unsoundness or ripening or other indications of decay? A. I noticed it first on Sunday, the 15th.

Q. Do you remember whether morning or afternoon? A. Along about noon.

Q. After that how did the cargo change, if any?

1607 A. It commenced ripening rapidly after that time.

Q. What was its condition when it was discharged here in New York? A. It was in bad shape.

Q. What was the condition of these cargoes when they were taken on board the ship at Colon? A. They were in good condition for shipping.

Q. You didn't have anything to do yourself with the disposal of either of these cargoes, the selling of them or anything of that kind? A. No.

Q. Did you see in the 9th voyage some of the stalks

1608 taken out without any bananas adhering to them? A. Yes.

Q. More than usual with banana cargoes? A. Much more.

Q. In your experience what is the effect on banana cargoes kept at sea coming from Colon for a voyage over 7½ days? A. I think a voyage of over 7½ days would have a bad effect on them.

By the Commissioner:

Q. That has been your experience? A. Yes, sir.

By Mr. Putnam: 1609

Q. You stated that you figured up the last voyage, leaving Colon at 9.30 P. M. Friday, arriving here on Saturday. I would like to have you figure up those hours and see what point you bring the ship to, whether the lightship, Quarantine or the dock? A. I find that she would have got into Scotland Lightship at 6.30 on the morning of Saturday, the 14th.

Q. And would therefore arrive at the dock at about what hour? A. About half-past nine; making a fair allowance. 1610

Q. That is a correction then of your other testimony? A. Yes.

Q. Were you at the wharf at all on Tuesday after the arrival of the vessel on the 9th voyage? A. Yes; I was there all day.

Q. Do you remember whether or not she unloaded any part of the cargo on Tuesday morning? A. I don't think she did; I don't remember.

Q. Do you remember what the weather was at Colon on Saturday the 7th of May, when you were 1611 loading the last voyage? A. It was rainy.

Q. Did it make any difference with the loading of the cargo? A. Yes, we had to stop while it rained.

Q. How long was it stopped? A. Half an hour or an hour at a time, at different times during the day.

Q. Do you know how much in all it detained the ship? A. May be five or six hours through the whole day.

Q. What was the condition of the cargo of bananas on this 9th voyage when it was taken on board at 1612 Colon? A. It was in good condition.

Q. None of it was over-ripe then or unfit for shipment? A. No, sir.

Cross-Examined By Mr. Kirlin:

Q. What do you mean by not over-ripe; what do you understand by that? A. It was about ¾ full.

Q. Tell us what that means? A. I don't know that I could explain it; it relates to the appearance of the bananas on the stalk.

1613 Q. What does the word "full" mean? A. It means full appearing; nearly ripe.

Q. ¾ ripe? A. No, not ¾ ripe.

Q. ¾ what? A. I don't know that I can explain it.

By the Commissioner:

Q Do you mean that it fills out as it ripens? A. Yes, that is it.

By Mr. Kirlin:

1614 Q. Fills out in what way? A. The bananas fill out as they grow, and if the stalk is cut when they are about ¾ filled out, then the bananas are said to be ¾ full.

Q. Do you mean to say that the bananas grow a quarter larger while they are on the voyage up? A. If they were left on the tree until they were thoroughly ripe they would be a quarter larger; that is the idea.

Q. You don't mean to say that they actually enlarge any after they are cut, do you? A. I don't think they do perceptibly.

1615 Q. What do you mean by saying ¾ full; ¾ of their natural size; is that what you mean? A. Probably ¾ of the size they would attain if they were left to ripen on the tree; that is the way I understand it.

Q. Have you ever been on any voyage with bananas from Colon to New York except these two voyages on the *Ceres*? A. Yes.

Q. What other voyages? A. On the Pacific Mail steamer *Newport*.

1616 Q. How many times? A. Probably 29 or 30 times.

Q. From Colon? A. From Colon to New York.

Q. What rate of speed does the *Newport* make? A. She averages 11 or 12 knots; she can go much faster.

Q. What did she average? A. She averaged 7½ days.

Q. Answer the question, please? A. I can't answer the question; I didn't figure it up.

Q. How do you happen to remember the number of days when you don't remember her average speed per day? A. That is easy.

Q. How do you happen to remember it? A. How

do I happen to remember that I have eaten my dinner? 1617
I don't know how long it took me to eat it, but I have a distinct recollection of having it.

Q. Is that all the explanation you can give of how you are able to remember the exact number of days, and yet don't know the vessel's speed? A. Yes, I think that is a sufficient explanation.

Q. Did the *Newport* come over the same course that the *Ceres* comes over? A. Yes.

Q. How far is Colon from Aspinwall? A. Colon and Aspinwall are different names for the same place. 1618

Q. You loaded at the same berth? A. Within a few blocks of the same place where we loaded with the *Ceres*.

Q. Where do the bananas come from? A. Somewhere up the railroad; I don't know just how far; Panama Railroad.

Q. Are there any bananas growing at Colon? A. Yes.

Q. Do they grow in merchantable quantities there? A. No. 1619

Q. How far up the country do they come from? A. From three to twenty miles probably; may be further than that.

Q. Come down on a railroad? A. Yes.

Q. How far apart were the places that you loaded these two cargoes? A. The first cargo we loaded up the Fox River. It might have been ¾ of a mile from the dock where we loaded the last.

Q. Is that by the railroad? A. The Fox River? No. 1620

Q. How do bananas get there? A. In canoes.

Q. Where from? A. From the same places.

Q. From up the river? A. Up the river.

By the Commissioner:

Q. Come down on the river? A. Come down on the river and come down on the railroad. The railroad follows the Fox River for quite a little ways there.

By Mr. Kirlin:

Q. How many days were you on the first voyage on

1621 the *Ceres* from the time you left Colon until you arrived at the lightship? A. Over nine days.

Q. How many days on the second voyage? A. Over nine days

Q. To the lightship? A. (Referring to memorandum). I should like to change those answers, and say on the first voyage 8 days and 9 hours; on the second voyage 8 days and 13 hours.

Q. When you said 7½ days on the *Newport*, did you refer to the average voyage or to any particular voyage?

1622 A. To the average.

Q. What was the shortest voyage you ever made on the *Newport* from Colon to New York? A. 7 days, I think.

Q. What was the longest? A. I will have to say 8, to make it even. I don't think we ever took longer than 8 days.

Q. Haven't the Pacific Mail Company boats that take longer than eight days from Colon? A. I don't know; I never was in any but the *Newport*; but I

1623 guess they all run on the same schedule time.

Q. All make the same speed? A. Yes.

Q. What are their other boats? A. The *Columbia* and the *City of Para*. The *Columbia* is capable of 16 or 17 knots, but she runs on the same schedule time as the other boats.

Q. Are those the only boats they had at that time? A. No, the *Colon* was running on this side part of that time.

Q. What was the speed of the *Colon*? A. I guess

1624 she averaged the same time as the other boats; I have no means of knowing just what she did, but I guess she always came in on time.

Q. On this first voyage all you know about when the bananas were ordered for was what somebody else told you; you didn't hear the orders given? A. No, I didn't hear the orders given.

Q. All you know about when they were cut was that when you came back you found them piled up on the bank? A. Yes.

Q. You have given some distances from different 1625
ports down there, where do you get those distances from? A. Take the latitudes and longitudes of the two places and take the difference between the two latitudes will give you the difference of latitude; take the difference between the two longitudes for the difference of longitude.

Q. In other words you have worked the differences out on the chart? A. Not on the chart. By means of Bowditch's Tables. There is a book called Bowditch's Navigator that gives the latitude and longi- 1626
tude of every known place.

Q. Can you give the speed over the distance from Colon to Bocas over the course that the *Ceres* went? A. I don't keep the run of her course.

Q. Can you give the distance from Bocas to Greytown over the course the *Ceres* went? A. If she went over the proper course, yes.

Q. Can you give it over the course she went, is the question? A. I don't know what course she made.

Q. Can you give the distance over the course she 1627
made from Greytown back—did she stop at Bocas coming back? A. No.

Q. Can you give the distance from Greytown back to Colon the way she went? A. Only the way that she might reasonably be supposed to go.

Q. No, the way she went. Answer the question just as I put it, and it will save time? A. I don't know just how to answer that, because I may be able to give the distance.

Q. You don't know what course she went? A. No, 1628
I don't know what course she went, but I may be able to give it, because she probably went over the proper course. I have no reason to suppose that she went any other way but the right way.

Q. You don't know? A. I don't know, no.

Q. In the evidence that you have given have you allowed anything for going in and out of the harbors? A. No.

Q. Have you made any allowance for any difference in speed in entering or leaving harbors or waiting

for pilots, or anything of that sort? A. No, no waiting for pilots enters into the calculation, for there are no pilots in any of those places except Bocas.

Q. Can you tell what speed the *Ceres* made from the time she left Colon to go to Bocas, from there to Greytown and back to Colon, during the time she was actually steaming? A. I can't state the actual speed she made; no.

Q. One of the Messrs. Wessells was on board on one of the voyages; which voyage was it? A. The last
1630 voyage, No. 9.

Q. On the first voyage you say the captain ordered the fruit? A. Yes.

Q. How do you know that? A. He told me he had ordered the fruit, and the agent told me. What object would they have in deceiving me?

Q. Who was the agent? A. Isaac L. Madura.

A. He told you the captain ordered the fruit? A. Yes.

Q. How did this fruit compare with the fruit that
1631 you used to bring from Colon while you were working for the Pacific Mail Company, as to grade? A. I think our fruit was about the same as what was usually shipped on the Pacific Mail steamers; I think it was in about the same condition.

Q. I didn't ask you about condition—grade? A. I don't think I understand:

Q. Quality and value? A. I should say it was about the same grade.

Q. They are still importing bananas, aren't they?
1632 A. Yes.

Q. And were at the time you came with the *Ceres* on these two voyages? A. Yes.

Q. How did you happen to see any of their fruit at that time?

MR. PUTNAM: Whose do you mean?

MR. KIRLIN: The Pacific Mail Company's.

A. No, I didn't see any at that time.

Q. Is it your opinion that this fruit was as good quality as you used to bring in the Pacific Mail ships,

is it? A. I think it was in as good shape when it was 1633
put aboard.

Q. (Repeated.) I mean when you put it aboard? A. I think it was in as good shape, as good quality; yes.

Q. Of the same value? A. I am not a judge of value.

Q. The same grade? A. Nor of grades.

Q. There is a difference in bananas, isn't there? A. Yes.

Q. Some bunches are more valuable than others? A. I am not a judge of grades; I am not a judge of 1634
fruit in that way.

Q. Aren't you experienced in bananas? A. I can tell if a bunch is fit to ship; whether it is apt to stand the voyage.

Q. Can't you tell whether one bunch is better than another bunch? A. I wouldn't venture to say which bunch would bring the highest price, if they both arrived in good condition.

Q. Was this fruit that you found on the bank on the first voyage covered up at all when you got there? A. 1635
Yes, sir.

Q. With what? A. With what was called trash. The leaves of the banana trees.

Q. Lying on the ground? A. The fruit lying on the ground and the trash on top of the fruit.

Q. How long were you putting the cargo aboard on the first voyage? A. I think about 32 hours. We worked from the morning on Saturday, April 9th, until Monday, at noon.

Q. Did you work Sunday? A. All of Sunday; 1636
we were not working steadily all that time.

Q. Who put the cargo aboard? A. Negro laborers.

Q. Why didn't you work all day Sunday? A. They wouldn't work on Sunday.

Q. Did they work Saturday night? A. Saturday night up till midnight without any trouble, and after that they kickd.

Q. Where did you get the distance, 1,952 knots, that you gave from Colon to Sandy Hook? A. That is

1637 the distance that the Pacific Mail Company gives on its chart of distances.

Q. Have you ever worked it out on the chart? A. I have not on the chart; but by means of Bowditch's Tables.

Q. That is a straight line, is it? A. No.

Q. What kind of a line is it? A. It is not a direct course because they go through the Crooked Island Passage and have to change the course.

Q. Is the course in this book of tables that you refer
1638 to? A. You have to find the course before you find the distance, by the method I worked it out.

Q. Did you lay down the course on the chart before you worked it out by these tables? A. No, sir.

Q. How were you able to work it out? A. I will explain it to you as well as I can. You add together the logarithmic sine of the proper degree of longitude; I have forgotten the rule.

Q. Did you ever work out the distance over the actual course that the *Ceres* made on either of those
1639 voyages from Colon to New York? A. If she made the usual course, yes.

Q. (Repeated.) A. I can't tell, because I don't know the course she made.

Q. You didn't do it, did you? A. I wouldn't say I did not do it; I can't tell; because I don't know the course she made.

Q. That is what I asked you, whether you worked it out on the distance she actually made? A. If she went over the proper course, I have worked it out that
1640 way.

By the Commissioner:

Q. You worked it out over the usual course, and you don't know whether she took the usual course or not? A. That is the idea.

Q. You never actually put down the course that is in the log that she made from Colon to New York on a chart and figured up how many miles it was, did you? A. No, I wouldn't do that in any case. It is much easier the other way.

Q. You have been testifying from a memorandum 1641
here as to dates and distances, etc. What memorandum is that? A. It is a copy of what was in the certified translation of the *Ceres'* log. I made a rough draft of it, and then figured it out on this sheet so I could get it handy.

Q. It is not any memorandum made by you at the time? A. No.

Q. Just an abstract of matters that you have taken out of the log? A. Yes, sir.

Q. How are you able to fix the date when you first 1642
noticed the fruit beginning to decay? A. Because we figured she ought to have been in on that day.

Q. Where did you figure that? A. I made up my mind that she ought to be in in about seven and a half days.

Q. You testified on the trial in this case and also before a commissioner before trial, didn't you? A. Yes.

Q. You haven't intended in your present examination to qualify any evidence you gave there in either 1643
of those cases, have you? A. No.

Q. Did you say anything to anybody at the time that this fruit was becoming spoilt? A. Yes, I called the attention of the captain to the odor on the first voyage; and Mr. Wessels stood at the hatch, I think, when I noticed it on the second voyage.

Q. Were the hatch covers off? A. Yes.

Q. All the way? A. Yes.

Q. How was the fruit stowed? A. The fruit was stowed on end. 1644

Q. Stowed close together? A. Close together; yes, sir.

Q. All solid out to the hatchways? A. No, there were shifting boards between them to preserve ventilation between the bunches.

Q. There were no passageways for you around through the hold away from the hatchway? A. Yes, I could get all over it; they don't stow fruit like they do barrels and other merchandise.

Q. You said in your examination in chief that the

1645 bunches were back where you couldn't see them—a good many of them? A. Yes, sir; a good many are covered up by other bunches.

Q. Then that is what I want to get at; your examination was limited in some way; to what extent was it limited? A. You mean, about how many couldn't I see?

Q. Didn't you see? A. I won't attempt to answer that.

Q. Where were those that you saw decaying; in 1646 what part of the hatch? A. I don't think any that I saw were decaying. There were some few bunches on the top began to show yellow; that is only natural ripening.

Q. You didn't actually see any decayed until you got to New York? A. Not until they began to take them out of the ship, no.

Q. Your only inference of decay prior to that arises from this smell that you have testified to? A. Yes.

Q. Did you walk around through these passages that 1647 you say were in amongst the fruit? A. Oh, yes.

Q. Did you examine all the fruit pretty carefully? A. Yes, with ordinary care.

Q. On the first voyage, what was the first day when you noticed this smell? A. On Monday.

Q. What date? A. I think April 14th.

Q. That was three days after you sailed from Colon? A. I should have said the 16th.

Q. You figured that you ought to have been in on the 16th, did you? A. Yes.

1648 Q. That would have been a voyage of five days?

Mr. Putnam: You better refer to your memorandum.

Q. What was the first day you noticed the smell on the second voyage? A. Sunday.

Q. What date? Have you any memorandum there on your paper as to any smell? A. No.

Q. How will referring to a memorandum help you any to fix the date when you noticed the smell? A. I can remember going down and noticing the smell

but I don't remember the date; I remember it was 1649
on a Sunday.

Q. How do you happen to remember it was on Sunday rather than on Saturday or Monday? A. Sunday is a day apart by itself; I don't know just how I remember it.

Q. Are you sure it wasn't Saturday or Monday? A. Yes.

Q. How can you tell one day from the other that far back? A. I can't explain it to you. I can remember one day from another eight years ago, and remember 1650
it distinctly.

Q. Assuming the 7th was Saturday, the day you left on the second voyage in May, that would be the 14th that you noticed the smell? A. Would it?

Q. What day would it be? A. It would have been the 15th.

Q. When you discharged cargoes from the Pacific Mail ships in seven and a half days, was there any smell to them? A. Usually not. When I say there was no smell, I mean—there is a smell to bananas, of course, 1651
but there is none of this decaying smell. That is what I suppose you mean.

Q. How do you account for it that the bananas on this voyage were emitting a decaying smell within the time that you say you have previously discharged cargoes without any smell at all? A. I don't presume to account for it; I don't think they were.

Q. Aren't the dates that you have given us, when you first began to notice the smell, less than seven and a half days from the time you left Colon? A. I think 1652
not.

Q. On any of the voyages when you came from Colon in the Pacific Mail steamships did you have any decayed fruit when your voyages were seven and a half or eight days? A. I don't remember.

Q. Don't remember ever that you had any rotten? A. I don't remember about it, really, whether we had or not.

Q. What color was the fruit that you usually dis-

1653 charged from the Pacific Mail steamers? A. A fine bright green color.

Q. All green; hadn't begun to get yellow? A. No. You will always find a few yellow bunches among them.

Q. I mean generally throughout the cargo; generally green? A. Generally throughout the cargo.

Q. This was all yellow on the *Ceres*, wasn't it? A. Almost all yellow, yes.

Q. Both voyages? A. The bulk of it was, yes.

1654 Q. And a good deal of it was rotten? A. Yes.

Q. Have you ever been on voyages that brought fruit here from any other ports besides Colon—bananas I refer to? A. Yes.

Q. From what ports? A. Port Antonio and Port Morant in Jamaica.

Q. What is the length of the voyage from those ports? A. 6 days and 6½.

Q. Do you know whether the Pacific Mail Company are carrying bananas from Colon at the present time?

1655 A. I have been told they are; yes.

Q. What line does the *Alliance* run in? A. The Panama Railroad Company.

Q. Where does she come from; from what port down there? A. From Colon. She hasn't run yet. They have just charted her; she hasn't made any voyage yet.

Re-Direct by Mr. Putnam:

Q. On voyage No. 8 on which you stated the *Ceres*

1656 left Colon on Monday, April 11, a little after noon, will you state again what day it was that you first noticed any ripening or smell of the fruit. You stated on cross-examination the 16th. I will ask you now what day of the week it was or what other way you have to make that more exact? A. It was on Monday.

Q. Monday would have been the 18th, would it not? A. Yes.

Q. You mean the 18th of April instead of the 16th

of April? A. If I said the 16th, it was a mistake. 1657

Q. You stated that the bananas were covered there with leaves. How large are those banana leaves that are used for covering? A. They are about two feet broad.

Q. How long? A. May be from ten to eighteen feet long.

Q. When bananas are cut what is actually cut down, the fruit or the tree? A. The tree is cut down.

Q. The whole tree? A. Yes.

Q. And those leaves are used to put over the fruit 1658 after it is cut off? A. Yes, sir.

Q. Is that an ordinary thing? A. Yes; that is always done; when they have occasion to cover the fruit they use the leaves of the trees.

Q. Was there any different mode of stowage of these bananas on the *Ceres* than what you were accustomed to on the Pacific Mail steamers? A. No.

Q. The same mode? A. Yes.

Q. And the same facility of walking around to look at the fruit, to let ventilation to them as was used on 1659 the Pacific Mail? A. Yes.

Q. What in your judgment would be the effect on a cargo of bananas for a steamer to lie still at Quarantine over night at the end of her trip up from Colon? A. It would be a bad thing for her to lie still at all with fruit on board.

Q. It is more difficult to ventilate the fruit when the steamer is lying still than when she is under way? A. Yes, unless there happens to be a strong breeze.

Q. Even then she won't let the air pass as well as if 1660 she was moving? A. No.

Q. In that first voyage, No. 8, going into Bocas, was there any detention there for a pilot at all? A. There might have been five or ten minutes.

Q. In the calculation that you have made have you or not allowed the full time that the log shows was taken there from Colon clear to Bocas? A. I don't understand that.

1661 By the Commissioner:

Q. How long was the eighth voyage from Colon to New York? A. Eight days and nine hours.

Q. And the ninth voyage from Colon to New York? A. Eight days and thirteen hours.

By Mr. Putnam:

Q. In both cases that is to Scotland Lightship? A. Yes.

By Mr. Kirlin:

1662 Q. Is the 7½ days that you gave as the voyage of the Pacific Mail boats also to the Lightship? A. No, I think that would be to Quarantine; I think that is the way I used to figure it. It doesn't make much difference; it is only a few miles either way.

Q. When do you expect to sail? A. On the 20th. To-morrow I go on the trial trip.

1663 WILLIAM L. RATHBUN, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Putnam:

Q. You are connected with the Aspinwall Fruit Company? A. Yes, sir; I am the president of that company.

Q. Where is their office? A. No. 232 Fulton street, N. Y.

Q. How long have you been in the business of im-
1664 porting bananas to New York? A. Since 1869; twenty odd years.

Q. How long have you been importing them from Aspinwall or Colon? A. Twenty-five years.

Q. Has that been a regular business in each year in the months of April and May, in the spring of the year? A. Every month of the year during that period.

Q. What in your experience is the length of a trip from Aspinwall to New York in which the fruit will arrive in good merchantable condition? A. We are

now bringing it in 6½ days in good condition; quite good. 1665

Q. How would you say on 7½ days? A. It can be brought in 7½ days, but there is a loss that must occur on account of the extra day.

Q. What would be about a fair allowance for the ordinary loss on a 7½ day trip from Aspinwall to New York? A. On a 7½ day trip I would say the loss would be about from 5 to 10 per cent., no, it wouldn't be 10; about 5 per cent.

Q. Beyond 7½ days would be too long a trip, would it? A. We would not bring them here if we had to make the voyage longer than 7½ days. 1666

Q. Take a trip on which the fruit arrives here on the morning of the ninth day, what would be the ordinary effect of that prolongation of the voyage on fruit? A. It would be pretty ripe.

Q. To what extent would the merchantable value of the fruit be damaged on the average in the months of April and May? A. It would go as high as 20 per cent.; it may go more if the vessel was unfortunate and met with head winds and everything of that kind, it would increase the loss more than 20 per cent. 1667

By the Commissioner:

Q. Why would that have the effect if that was the cause of the prolongation? Why would it have that effect more than for any other cause? A. The fruit is timed. Bananas ripen very quickly after you get beyond a certain number of days; and when they start to mature, to ripen, they go very fast. 1668

Q. Is there any other element except the length of time? You spoke about head winds being the cause? A. Head winds, or detention by accident to machinery or anything of that kind.

Q. It is merely the detention that caused the loss? A. The detention, yes; the time causes the loss.

Q. (By Mr. Kirlin.) Would it make any difference in the merchantable quality of the bananas that the delay was owing to the fact that the ship was slow rather than head winds? A. It would have the same

1669 effect; head winds would be detention, and if she was slow, it would be detention.

By Mr. Putnam:

In case the bananas arrive here ripe, what market is there for them? A. A ripe cargo depreciates very fast, for the simple reason in New York here is, as we say, a dumping ground for all the ripe fruit; it can't go any further; if they put it in cars or send it away, by the time it reaches the destination where it would
1670 bring a price, if it did, it is spoilt, it is gone; so that all the ripe fruit is put right into this city and sold at a mere sacrifice, because there is so much of it right here in the city. If it could be distributed the same as good fruit, it would bring a better price; but it can't be sent away.

Q. In case of green merchantable bananas, they are shipped to the interior some distance? A. Then they are sent out to a market, yes.

Q. Suppose a cargo arrives in which there is from
1671 20 to 30% of the bananas a total loss, that come off the stalk, what would probably be the damage to the remaining bananas that can come out of the ship? A. There is a considerable difference: when there is a quarter of the cargo so ripe that they couldn't be moved except shoveled out of the vessel, the balance of the cargo is very much affected. The bananas that are so ripe produce a great deal of heat themselves and humidity comes with it; because the banana itself has a great deal of water, moisture; and when it becomes
1672 warm that humidity is the cause of the balance of the cargo ripening up considerably. When we have a cargo discharged on a day when the humidity is great here in the city, we work very much faster in order to get it out, because the effect is very much against the price.

By the Commissioner:

Q. Would naturally the bananas that had become a total loss be scattered through the cargo? A. Yes; they are scattered all over the cargo.

Q. It is a question of degree of ripeness of particular bunches? A. They are what we call sprinkled—

we would say the cargo is sprinkled; that means there 1673
is ripe bananas in all parts of the vessel; and where a ripe banana is stowed around the others that are green it will affect those all around it, and I should say that the effect on the balance of that cargo—you asked me the effect it had on the balance of the cargo?

Q. If one quarter is totally lost, what would be the effect on the three-quarters? A. I should say between 20 and 30% damage to the balance of the cargo, they would depreciate. It is a very easy matter to depreciate the value of a bunch of bananas. If we are 1674
making grades, selling bananas firsts and seconds, firsts for $1 and seconds for 75 cents, and a man is passing a bunch of bananas, and let it fall three feet to a dock, that isn't going on the dollar truck, it goes on the 75 cent truck. There is a difference right there of 25%, from the fact that the man let it fall just three feet.

Q. What is the custom in your trade as to the cutting of the bananas, whether half or three-quarters, or how the size is when they are cut? A. They are sup- 1675
posed to be ¾ full.

Q. That means ¾ of the full size when matured? A. Yes.

Q. That is the usual custom at Colon? A. That is the custom there. That is, if they were allowed to remain and ripen on the tree they would increase a quarter more in size.

Q. Why is it that you cut them at that size? A. That is in order to ensure their arriving here in a green condition. 1676

By the Commissioner:

Q. They do not increase in size any as they ripen after they are put on board ship? A. The moment they leave the tree they don't increase any more in size.

By Mr. Putnam:

Q. In case a cargo comes up and is exposed to decay, which part of it will rot first? A. The fullest fruit, that is, the best fruit; the fuller the fruit the quicker it will ripen.

1677 Q. So the best fruit will ripen and rot first? A. The best goes first, always.

By the Commissioner:

Q. Is that process of decay always through ripening? A. Yes, sir.

Cross-Examined by Mr. Kirlin:

Q. I believe you saw the cargo that was discharged from the *Ceres?* A. Yes, sir; I was down there at
1678 the second cargo, I think it was.

Q. And you gave some testimony at the trial about the grade of that fruit, I believe? A. Yes, sir.

Q. Do you remember what you said about that? A. Yes; I said that there were many of the bunches that were not as full as the fruit that I was bringing up. I think that was what you asked me. I know there was very little I testified to.

Q. You testified that it was lower priced fruit than yours, didn't you? A. Yes, I said that the value was
1679 not as much as my own; but still, I don't know what it cost them.

By the Commissioner:

Q. Do you mean by that, the quality was not? A. The quality was not as good. We are regular customers and have been doing business there for many years.

By Mr. Kirlin:

Q. Give us an idea of the percentage of difference in
1680 the value between your fruit and that such as you saw on the *Ceres?* A. I figured that out, I think for you some time. I really have forgotten the figures; but as near as I can remember from looking at it, I should say the value was ten per cent. less than ours.

Q. Do you know how long you order fruit before your steamer is ready to take it at Colon? A. Yes. If a vessel is sailing at six o'clock on Wednesday, we order the fruit at one o'clock on Monday, they start cutting.

Q. How long do you expect to have it at Colon before it is taken on board ship after it comes down

from the interior? A. They will start in very soon after it comes down; three or four hours after it comes down they start putting it in. The process is very much slower than it is here. 1681

Q. What would be the effect of leaving a cargo of bananas on the bank alongside the river for a day or a day and a half, covered over with leaves? A. Of course that don't improve the quality or the value.

Q. It helps to acquire that quality which at this end means an earlier ripening, doesn't it? A. Yes, it has a tendency. Of course if they are cut three days or cut sooner than what I say that we cut ours, of course it is against the fruit. We wouldn't like to cut ours any sooner than that time, say sixty hours from the time the first bunch is cut, the steamer is supposed to go to sea. 1682

Q. How would standing in railroad cars at Colon, for say a day or more affect it? A. We have that same experience. Of course it don't improve the fruit, because the cars are hot, but we have been doing that for years. 1683

By the Commissioner:

Q. Is there an additional element besides the lapse of time? You speak about the cars being hot? A. They are always very warm, yes, sir.

Q. What is the effect of that? A. It has a tendency to ripen the fruit.

Q. More than the mere lapse of time under ordinary circumstances? A. Yes, sir; we have been using cars for twenty-five years. 1684

Q. How about on shipboard; would it have any greater tendency to ripen being in hot cars than stowed on shipboard the same length of time? A. No, the ship is cooler.

Q. You say your first bunch is cut sixty hours before the sailing of the steamer? A. Yes, sir; we always try to beat sixty hours.

Q. Does that cutting go on until she sails, or do you have to transport it to the steamer? A. They will start on Monday afternoon. If we start at twelve

1685 o'clock to give the orders, on the one o'clock train the orders are sent out to cut; the cutting is done that evening and the next day. Wednesday she sails, and there are no bananas cut on Wednesday.

Q. When do they begin to transport to the ship? A. They start and bring them to the cars on Tuesday morning; all day Tuesday.

Q. And they come down on Wednesday? A. Wednesday, they are also received; those that have been cut late on Tuesday are received early on Wednesday.

1686 Q. Some are received on Tuesday? A. Yes, sir.

By Mr. Kirlin:

Q. How far do the bananas come? A. From two to nineteen miles.

Q. Do you get your bananas from the same planters that Messrs. Wessells get theirs? A. The same planters.

Q. You ascribe the difference to the fact that your company is an old customer? A. Of course, naturally

1687 we have old friends who have never sold to opposition. Wessels & Co. are in opposition to us, and these old people that have never sold to the opposition, they bring their fruit to us, which makes the fruit that we get better than anyone who goes there in opposition to us.

Q. What would be the effect upon the ripening of fruit on a voyage if it had begun to get yellow before it was put on shipboard at Colon? A. That very often happens. You must lose three to five per cent.

1688 anyway it comes in, no matter how soon you come, because there are some bunches, in receiving hurriedly, are really too ripe to go on the ship. There are always some few. That is very small, but there must be some.

Q. Suppose that a large part of the cargo was yellow when you shipped it at Colon, what condition would you expect it to arrive in in New York? A. Very ripe here.

Q. What percentage would you expect to find off the stalks? A. I don't know how ripe it was when it left there.

Q. Say from a quarter to a half yellow? A. If a 1689
banana is ripe there, when it leaves there, it is of no value when it reaches here.

Q. Suppose you have the cargo of a ship there from a quarter to a half yellow, to what extent would you expect to find the merchantable value of the cargo depreciated on the arrival at New York, at the end of an ordinary voyage?

MR. PUTNAM: You mean 7½ days?

MR. KIRLIN: Yes.

1690

A. Of course a great many or perhaps all that were ripe when they left there, as I said before, would have no value here; I could tell more if I had seen it there; but in 7½ days—

Q. How far would the spoiling of those which were ripe, yellow, when shipped affect the remainder of the cargo; the same percentage that you have already testified to, 20 or 30%? A. Yes, between 20 and 30%.

Q. What speed do your vessels make now? A. 13 knots, and sometimes more. 1691

Q. In former years they didn't use to come so fast, did they? A. No, we used to make it in 8½ days when we first started some years ago. That was when we had wooden vessels. Now they are iron. Iron vessels are very much warmer than wooden vessels. That has been demonstrated here for a number of years.

Q. On the wooden vessels, when you used to bring it in 8½ days, if it was put aboard green in proper condition, it used to arrive in fair condition, did it not? 1692
A. No, we always had great losses. We had 20% even in a wooden vessel in those days. We made that up very carefully. As I was telling some friends of mine, that old Mr. Bostwick who made up the statistics for the Custom House put down the waste on the Aspinwall bananas 20%, and those were figures given by ourselves.

Q. Does that mean waste from rot or loss in market? A. From rot. But in those days we could stand that percentage very well. We received about three times

1693 more in price for the bananas than what we do now. Now we couldn't do any such business.

Q. What is the slowest iron vessel that you have ever brought bananas from in Aspinwall? A I think the slowest vessel we had was the *Crescent City*.

Q. What was her speed? A. She was supposed to be 11 knots, but she hardly did 10. She lost a great deal of money for us.

By the Commissioner:

1694 Q. Was she an iron ship? A. Yes.

By Mr. Kirlin:

Q. What other slow ship have you used? A. We have used the *San Marcus*.

Q. What is her speed? A. Said to be 11, and did not make 10.

Q. What other slow vessels have you used? A. We strike slow ships every once in a while. The *Colon*—no, she was all right; she often made 12 knots. But

1695 there have been other steamers that have made it in slow time, but they couldn't do banana business unless they make 11, 12 or 13 knots, along there; that is, arrive here in 7½ days.

Q. Do your vessels make a trip of any regular length in miles from Colon to New York? A. Make an average speed.

Q. Do they go over a course of a certain number of miles? A. Very nearly; within the same number of miles.

1696 Q. About what is the distance? A. 1,984 miles.

Q. From where to where? A. From dock to dock. When I say 1,984, of course I have never measured it myself; I have only seen it on the bulletin board of steamers; and I have made the voyage myself a number of times.

Q. You have an agent at Colon, I suppose? A. Yes, sir.

Q. He resides there all the time? A. He resides there all the time; been there a number of years.

Q. And attends to your ordering and to your ship-

ments, does he: A. He attends to the entire business 1697
of banana shipments; yes, sir.

Q. I suppose it might be the case that a fairly ripe cargo might happen to hit a good market in New York City, even though you were not able to send it away on a railroad, might it not? A. Of course the market varies; there are times when the market would take more ripe fruit than other times.

Q. The mere fact that the fruit arrived ripe without any reference to the market wouldn't necessarily prove that there had been a loss in marketable value? A. I 1698
don't quite understand that.

Q. In order to determine the loss in any particular instance, you would have to consider the ripeness of the fruit, in connection with the condition of the New York market? A. Yes; that would depend upon—as I say, the commercial market entirely would govern that.

Q. Do they ripen down there at any particular season, or do they keep on ripening all the year round? A. All the year round. They grow all the year round. 1699
But they are cut before they are ripe, as I say, ¾ full, in order to ensure their arriving here. The object in cutting bananas is to cut them as full as possible, calculating on their arriving here green; we don't want ripe fruit here. There is no money in ripe fruit. Our object is always to get bananas here green. If the voyage was lengthened all the way out longer than that, we would have to cut them way down very thin in order to get them here. But we can't do that, because Cuba and Jamaica and those places would send 1700
so much better fruit here that we would have no market for thin fruit. So the object is to cut them as full as possible, ensuring their arrival in a green state.

By the Commissioner:

Q. In any event, even if it arrives; say, in 7½ days, I judge from what you say that it must be disposed of pretty promptly? A. Yes, sir; you can't wait very long to dispose of them.

Q. Don't these retailers take some time in disposing

1701 of bunches of bananas? A. They only buy a few; they know just about what they can sell from day to day.

Q. They can't keep it long? A. No; they know about what they can sell, and they buy accordingly.

By Mr. Kirlin:

Q. Is there a banana exchange that corresponds in any way with Brown & Seccomb's Exchange for oranges and lemons? A. No, sir; none that I have
1702 ever heard of. They have auctions here, one or two concerns.

Re-Direct by Mr. Putnam:

Q. There isn't any time in which fruit that arrives here ripe will bring as much as fruit that will arrive here green, is there? A. Never at any time; no.

Q. You stated that you saw the cargo of the *Ceres* on the last voyage. I think you stated on the trial that you simply looked down the hatches; you didn't
1703 examine it with any particular care, except what you could see from the hatches? A. No, I walked around the vessel; remained there a very short time, looked down the hatches; I saw she was ripe; I saw considerable ripe stuff passed off from the after gangway particularly.

By the Commissioner:

Q. What do you mean by "passed off," passed off the vessel? A. Yes, sir; docks.

Q. Not what was thrown away? A. No, that was
1704 left inside.

By Mr. Putnam:

Q. Just describe what you call docks. A. Inferior fruit; it is the lowest grade fruit that can be taken from the vessel. If a bunch of bananas can possibly be taken out of the hold without all the bananas falling off, it is placed on the dock; and when it is placed on the dock, it is sold to the lowest class trade.

Q. Suppose such a thing as a cargo shipped at Colon that was from a $\frac{1}{4}$ to $\frac{1}{2}$ yellow when it was put on

board there; wouldn't it be a total loss when it arrived here at the end of 8½ days? A. Yes, there would be no value connected with that, if it was ripe before it started. 1705

Q. You have stated that in the cars the bananas are more or less heated while they are waiting to go on board. How would that compare with fruit that was piled up on the banks of the Fox River and covered with these leaves that they call trash? A. There is more damage in the cars than there would be leaving them out covered up. 1706

Q. Ventilation goes through them when they are on the bank? A. On the bank there it is a very good way of keeping bananas when they are covered up with trash.

By Mr. Kirlin:

Q. What is the effect of passing them from cars on board during a rainstorm? A. That don't affect them at all.

Q. Wouldn't it affect them at all to get damp? A. If it is raining at the time they are put aboard; when it rains the atmosphere is cooler, and if they are put into the ship, the ship's hold is cool when it rains, and it is a very good thing to have the vessel's hold made cool before the bananas go in, because it is harder to get them cool after they go in than it is before. 1707

Q. Is it a good thing to have it rain in on them after they start? A. That don't hurt them, no, sir; that would cool them off a little. We never stop when it is raining; we never consider it any damage at all. I loaded bananas for fifteen years straight in that country. 1708

Henry E. Wessels, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Putnam:

Q. You are one of the libellants and you were on the *Ceres* on Voyage No. 9? A. I was on the *Ceres* on Voyage No. 9.

1709 Q. Did you see the fruit when it was put on board the ship? A. I did.

Q. What was its condition then? A. It was grass green; good shipping condition.

Q. What time did the *Ceres* leave Colon on that voyage for New York? A. Left on Saturday about eight o'clock in the evening, which would be the 7th of May.

Q. When was the fruit all on board? A. The fruit was all on board not later than half past four; the
1710 fruit was on board a little before that time; but the papers and everything were concluded and made ready; the ship was ready, as far as we were concerned, to go to sea at half past four.

Q. You were on the ship all the voyage up? A. I was.

Q. How was the weather? A. Very fine; had rain; but so far as the sea was concerned, very smooth; as smooth a trip as I have ever made.

Q. Did you notice the bananas during the voyage?
1711 A. I did.

Q. How were they on the following Sunday, a week from the Sunday after leaving? A. The fruit had begun to give off a smell Sunday, and the fruit around the hatch commenced to show signs of turning.

Q. What time in the day was that first noticeable? A. It was noticeable in the afternoon. This would be the 15th I have reference to.

Q. When did the *Ceres* arrive here at her wharf?
1712 A. On Monday, the 16th of May, about noon.

Q. And she began discharging then? A. She began discharging at one o'clock

Q. When did she complete the discharging? A. On Tuesday afternoon.

Q. What was the condition of the bananas as they came out of the ship? A. Very ripe, over ripe.

Q. Did you see them all discharged? A. I did.

Q. There were some that didn't come out on the stalk? A. Some of the stalks never came out of the hold; the bananas were off them.

Q. How long have you been in the fruit trade in bananas? A. Fifteen years. 1713

Q. What would you ascribe the condition of the bananas to as they came out of the ship? A. Too long a voyage.

Objected to. Allowed.

Cross Examined by Mr. Kirlin:

Q. You were examined at the trial? A. I was.

Q. You don't wish to qualify any evidence that you gave there, I suppose? A. None at all. 1714

Q. Did you have any other ships trading at Colon at this time? A. Not at that time.

Q. How long before that had your last ship come from Colon before these last two trips of the *Ceres?* A. Hadn't had any from there for some time; a good many years.

Q. Was the *Ceres* the only ship you sent to Colon? A. The only one.

Q. During the period that you had her under charter? A. Yes, sir. 1715

Q. Where else did you import bananas from during the period of the *Ceres* charter? A. From Livingston in Guatemala.

Q. How long a voyage is that to New York? A. A little over six days.

Q. What ships did you have going there? A. Had the steamer *Gurly;* the *America;* that is all we had at that time.

Q. What steamers did you have in use before the *Ceres?* A. That would be two years before; we had the *Ceres* for over a year. 1716

Q. The year before that what ships did you have? A. You mean the year before we took the *Ceres?* We had the *Jamaica*, the *America*, *South Portland; Gwent.* That is all I can recollect just now.

Q. What was the speed of the *Gurly?* A. Eleven knots.

Q. What was the speed of the *America?* A. Eleven knots guaranteed.

1717 Q. What was the speed of the *Jamaica?* A. About 11 knots.

Q. The *South Portland?* A. The *South Portland* was a 10-knot boat.

Q. The *Gwent?* A. A 10-knot boat.

Q. Where did they trade to? A. Jamaica.

Q. What is the length of the voyage from Jamaica? A. About 1,480 miles; $5\frac{1}{2}$ to $5\frac{3}{4}$ days for those boats.

Q. When did you last trade at Colon? A. I guess about seven years before the time in question.

1718 Q. What ships did you send there then? A. I wish to qualify that. We didn't go down to Aspinwall ourselves at all; we merely sold fruit for people that went there; we never imported any from Aspinwall ourselves.

Q. Who did you act for dealing at Colon? A. People in Jamaica.

Q. What ships brought the fruit here that you sold for them? A. The steamer *Edith Godden;* that is the only vessel that came from there to us.

1719 Q. What was her speed? A. Eleven knots.

Q. How long did she run in that trade? A. I don't recollect; it is a good many years ago.

Q. Do you remember particularly about the length of her voyages? A. No, sir; I couldn't tell you now.

Q. The number of days? A. No, sir; I couldn't tell you.

Q. How do you recollect her speed was 11 knots? A. Because the boat was running from Jamaica to New York, a matter of eight or nine years; my

1720 father bought an interest in her afterwards and she was running for us, and so I know she was an 11-knot boat.

Q. What became of her? A. She was lost.

Q. Have you imported bananas from Colon since the occasion of the last voyage of the *Ceres?* A. No, sir.

Q. None of the other vessels that you have mentioned except the *Edith Godden* brought any fruit from Aspinwall? A. Didn't bring any from there.

Q. What is the length of the voyage to Livingston,

miles? A. I don't know the distance. I know it takes about six days and a few hours to go there. 1721

CHARLES T. WESSELS, being duly sworn and examiued as a witness for the libellants, testifies:

By Mr. Benedict:

Q. You are one of the libellants? A. Yes, sir.

Q. How long have you been in the banana trade? A. Since 1879. 1722

Q. You saw these bananas that arrived on the *Ceres* on both voyage No. 8 and voyage No. 9, did you not? A. Yes, sir.

Q. What was the condition of the bananas, referring particularly to voyage 8? A. The cargo was in bad order, the bananas were over-ripe, and a large quantity of them were left in the ship and dumped.

Q. Those that were not left in the ship were taken out and how were they disposed of? A. Sold the best we could; what we couldn't sell we consigned to sell. 1723

Q. Have you an account showing the bananas that were sold and those that were consigned? A. I have.

Q. Will you produce such an account in reference to voyage 8 and 9? A. Yes, sir.

Q. Does that account show the prices received for the bananas sold and also the returns for the bananas consigned? A. It does.

Q. Does that account contain an account of all the bananas that were shipped or only those that were disposed of? A. Only those that were disposed of: it is an account in detail, showing each transaction. 1724

The account is offered in evidence and marked Libellant's Exhibit No. 1 of this date. Objected to as immaterial, irrelevant and incompetent. Admitted.

Q. Why was it that these were not all sold and that some were consigned? A. It is a habitual practice of the fruit trade to consign what you can't sell. These that were consigned, the cargo was very over-ripe;

1725 there was more ripe fruit than this market would take. Therefore we had to do one of two things; see the fruit rot, or consign it to the people who had an outlet for it.

Q. By consigning it, you ship it to merchants in the vicinity to sell the best they can; is that it? A. Yes, but the merchants were here and saw the fruit; they were afraid to buy it, so we simply arranged with them for them to sell it for our account. Then there are one or two consignments where we risked shipping
1726 the fruit, hoping that the sale would go through all right and on arrival it was rejected by the buyer and sold for our account there. There aren't a great many of those in the account though.

Q. And this account gives a correct statement of the returns made to you of those shipments that were consigned?

The same objection. Allowed.

A. It does. That account you have there is a state-
1727 ment of the gross proceeds of the cargo. There is nothing whatever deducted for selling expenses or charges for selling.

Q. Referring to the account, will you just give the proceeds of voyage 8?

The same objection and ruling.

A. Cargo No. 8 fetched $4,802.14; that is the entire amount.

Q. And for cargo No. 9? A. $7,703.99. I wish to
1728 state here that there are a few allowances taken off the foot of each account which were for claims made by people after they got the goods.

By the Commissioner:

Q. That go to reduce those amounts you have given? A. No, those are the net amounts.

Q. How was the sale made at New York? A. People come right down to the dock and buy, and a large portion of these were sold out of town before the ship arrived.

By Mr. Putnam: 1729

Q. Had you made sales to arrive in respect to both cargoes No. 8 and No. 9?

Objected to as immaterial. Allowed.

A. Yes, sir.

Q. Were you also acquainted with the market price of sound merchantable bananas on the dates of the arrival of these ships? A. I was.

Q. What was the market price of sound bananas on the date of the arrival of voyage 8, that is, April 20th? 1730

Objected to, that it doesn't yet appear whether there was any market price or what the market price is based on; no foundation is laid for the question.

Q. Was there a market price of bananas on the 20th of April, 1892? A. There was.

Q. How was that shown in the market at the time? A. If a man had come to me and wanted to buy bananas, I would have given him a price and he would 1731 have accepted my offer if it was low enough.

Q. And you had actually made sales to arrive? A. I had.

Q. Can you state about how much you had sold to arrive in respect to the voyage of April 20th? A. Yes, sir; I had sold about one-third of that cargo to arrive.

Q. To different purchasers? A. To different purchasers out of town.

1732

By the Commissioner:

Q. Did they take any of those? A. Yes, sir. As a rule, those are the only sales we make prior to arrival.

By Mr. Putnam:

Q. Where was the fruit deliverable under those sales to arrive? A. In New York City.

Q. (Repeated.) What was the market price of

1733 sound bananas on the date of the arrival of voyage 8, that is, April 20th, 1892, each grade?

Objected to as irrelevant. Allowed.

A. The first, $1.40 per bunch; the second, 88 2/3 cents; the third, 50 cents.

By the Commissioner:

Q. You are speaking of the grades of the bananas that were on this ship? A. Yes, sir.

1734 By Mr. Putnam:

Q. In the account of voyage 8 you have the total number of bunches 9,143; can you state how many bunches there were that were not taken out of the ship as bunches, but were left to decay? A. 4,252 bunches.

By the Commissioner:

Q. Don't the bunches vary in size? A. Yes, sir.

Q. Still you sell them by the bunch? A. By the

1735 bunch; but the size is what causes the different grades.

Q. You sell them according to size? A. Yes, sir.

Q. Do you know anything about the quantity of each grade? A. Yes, sir.

By Mr. Putnam:

Q. What was the quantity of each grade in the shipment?

Objected to as it does not appear that the witness was there and saw it or knows anything

1736 about it. Allowed.

A. I have the invoice which the captain gave me.

The invoice is offered in evidence. It is marked Libellants' Exhibit No. 2, of this date, and is as follows:

"Messrs. G. Wessels & Co., New York, 1737
To Isaac L. Maduro, Colon.

8696	Bunches	Bananas Firsts at 75c.	$6522	
4699	do	do Seconds " 40c.	1879	60
			$8401	60

E & O E

In settlement of the above I have received from Captain O. J. Svensson in Columbian currency..... $5000 1738
and in a 30 d/s draft on Messrs. G. Wessels & Co. for $2126, which at the rate of 60% premium as arranged with said Captain is equal in currency to..... 3401 60

$8401 60

E & O E

Isaac L. Maduro."

Q. Assume that the quantity was as stated in Libellants' Exhibit 2, what would be the grades that would be in the outturn on the usual voyage of 7½ days from Colon? A. To begin with, the grading at Colon is not as strict as the grading here. Not all bunches graded as firsts at Colon would pass at New York as firsts. Then I have allowed 5% natural loss through decay on a 7½ day voyage. I figured out that the Aspinwall firsts would turn out 30% New York firsts and 70% New York seconds. I figured the Aspinwall seconds would turn out 25% New York seconds, 65% New York thirds 1740
and 10% New York docks. 1739

By the Commissioner:

Q. I understand you to say that the percentage of the Aspinwall firsts that you deduct in order to get at the real firsts go into the New York seconds, become part of the New York seconds? A. Yes, sir.

Q. But you reduce the Aspinwall seconds by a percentage? A. Into seconds and thirds, and some of the

1741 Aspinwall firsts and seconds will go into the docks, or decks, as we call them.

Q. That means what? A. A bunch that is too ripe to lift; a bunch that may have been broken.

Q. And all lost absolutely? A. No, there is value to that.

Q. All this is based on the question of the number of bananas on the stalk in the bunch? A. Yes, sir.

Q. And you are stricter here in New York in that count than they are in Aspinwall? A. That is the
1742 idea.

By Mr. Putnam:

Q. There are other things that contribute to grade down the fruit besides the number on the stalk, are there not? A. Yes, sir.

Q. Will you state what they are? A. Ripening, breaking; what you might term maltreatment on board ship.

Q. That is any scarred fruit? A. Yes. For in-
1743 stance, if a bunch is dropped any considerable distance so that it is damaged and shows bruises, afterwards we would reduce that at least one grade, particularly if the men that were buying it saw it drop.

Q. Have you made any allowance in this estimate for all those things? A. I have, a very liberal allowance.

Q. In that calculation that you have made what number of bunches of New York firsts, seconds and thirds and docks would you have on voyage 8?

1744 Objected to that it doesn't appear yet by any competent proof what number of firsts and seconds were shipped at Colon. Allowed.

A. There would have been 2,478 New York firsts,
6,899 " " seconds,
2,901 " " thirds,
447 " " docks or decks.

By the Commissioner:

Q. This computation that you have made here, what

guides you in making it, in fixing a percentage? A. 1745
My knowledge of the trade, my acquaintance with the banana business and my acquaintance with the methods of selection generally. I am familiar with the methods of all the importers; I am on their ships daily and see how the things go.

Q. Does that matter of making a percentage enter into your dealings in any way or your calculation with reference to profits? Undoubtedly.

Q. You are accustomed to make those calculations? A. Certainly. 1746

Q. In the regular course of your business? A. In the regular course of our business.

By Mr. Putnam:

Q. Carrying that out one step further, what would have been the proceeds of cargo No. 8 at the market prices that you have given?

The same objection and ruling.

A. $10,426.75. 1747

Q. And the actual proceeds were how much? A. $4,802.14. The firsts on voyage 8 I figure at $1.35; the seconds I figure at 80 cents; the thirds at 50 cents, the docks at 25 cents; that makes a total of $10,426.75. Those are prices below what I sold to arrive.

Q. Those are prices below what you call the market value? A. Yes, sir.

Q. Have you also the invoice of cargo on voyage No. 9? A. Yes, sir.

It is offered in evidence. Objected to as be- 1748
fore. Admitted and marked Libellants' Exhibit No. 3 of this date, and is as follows:

1749 "Messrs. G. Wessels & Co.

To Isaac L. Maduro.

9095	bunches	Bananas	Firsts at 90c.....	$8,185 50
8319	do	do	Seconds at 48c...	3,993 12
834	do	do	Thirds at 30c.....	250 20
				$12,428 82
$12,428.82 at 1. 60 U. S. C...				$7,768 00
Plus balance as per statement				89 40
1750 E. & O. E.				$7,857 40

In settlement of the above I have received the equivalent value in drafts at 30 days' sight on Messrs. G. Wessels & Co.

Isaac L. Maduro."

Q. Will you state what calculation you have made on the New York out-turn of Voyage No. 9, at the usual length of 7½ days?

1751 The same objection and ruling as before.

A. The details of the calculation are precisely the same. There would be

2592	New York	firsts
8024	"	seconds
5137	"	thirds
1582	"	docks

That is after allowing 5% natural loss in the same proportion.

1752 Q. Were you acquainted with the market value also in May, 1892? A. I was, sir.

Q. In the same way as in the testimony you have given in regard to voyage No. 8 in April?

Objected to as immaterial. Allowed.

A. Yes, sir.

Q. What was the market value of firsts, seconds and thirds on May 16, 1892?

The same objection and ruling as before.

A. The firsts I sold to arrive at an average of $1.42, 1753
the seconds averaged 84⅝ sold to arrive; the thirds averaged 63c.

By the Commissioner:

Q. Do you say those were the fair market values? A. Yes, sir; those were the sales to arrive.

By Mr. Kirlin:

Q. Of first class sound good fruit? A. Yes, sir; the kind of fruit we expected to get.

1754

By Mr. Putnam:

Q. And those were the fair market values on that day? A. Yes, sir. On Voyage 9 I figured $1.35 firsts, 80c. on seconds, 50c. on thirds, 25c. on dock, making a total of $12,882.40.

Q. Why do you figure the estimated prices as less than your sales to arrive? A. With the idea to make it so there can be no dispute about it really. I want to go safely under the market.

Q. Can you state in voyage 9 the number of bunches 1755
that were totally lost, not delivered from the steamer? A. 3583 bunches.

By the Commissioner:

Q. What grade? A. I can't tell that; habitually the best bunches are those that rot.

Q. They were all lost except what you have returned here as having been either sold at auction or consigned and sold? A. Yes, sir; with the exception that a few of the bananas which fall off in the hold that are good 1756
enough are picked up and put in boxed. Probably there were 50 or 60 boxes in each of those voyages. That are included in the sales I have given.

By Mr. Putnam:

Q. Those are detached bananas? A. They drop off in the hold and remain in the hold and are picked up there and put in boxes.

Q. In your experience in importing bananas, does a day's detention, or a day and a half detention at the

1757 end of a voyage, have an injurious effect on the fruit? A. Unquestionably; more so at the end of a long voyage of course than at the end of a short voyage.

By the Commiss oner:

Q. How soon after the arrival of the vessel at the dock did you dispose of the fruit in the way you have mentioned? A. Immediately.

Q. The same day? A. Certainly; as quickly as we can get the gangways rigged.

1758 By Mr. Putnam:

Q. In respect to voyage 8, which arrived here April 20th, can you state when all the cargo was out of the ship? A. I think it was all discharged that same day; in fact, I am sure it was.

Q. And the other cargo was May 16th and 17th, wasn't it? A. Yes; that cargo came in, I think, we commenced work about twelve or one o'clock, and we didn't finish that night; discharged the next day.

Q. Was there the usual dispatch in unloading? A.
1759 No; more than usual.

Cross-Examined by Mr. Kirlin:

Q. How long before this was it that you imported bananas from Colon? A Personally I never imported any. My firm never had imported any except as agents. I think there were cargoes in the *Edith Godden* in 1879; two cargoes about which my brother just testified.

Q. Those were the two that came on the *Edith*
1760 *Godden?* A. Yes, sir.

Q. Do you remember any more particularly about that ship than he does? A. Yes, a little more.

Q. What more? A. I remember that I have travelled in her quite often. It was very common for her to turn up 12 knots an hour. And while we owned her we should have felt badly if she were called an 11-knot ship.

Q. You owned part of her yourself? A. We did for a while; that is, my father did; we sold out of her afterwards.

Q. This first cargo of bananas was paid for by Capt. 1761
Svensson you say? A. Yes, sir.

Q. What was the arrangement you made with Capt. Svensson about buying the cargo? A. We gave him a sum of money. For any excess he was to draw on us, which he did. He turned that in to us as part of the account.

Q. You got him to buy the cargo for you instead of buying through agents? A. Yes, sir.

Q. You gave him some money and authorized him to draw on you for the balance of the invoice? A. 1762
Yes, sir.

Q. How did you buy the second cargo? A. My brother went down in the same capacity.

Q. And he drew drafts for this? A. I think he did, unless he took the money along; no, he drew the drafts for it.

Q. Is this Mr. Maduro one of the gentlemen that Mr. Rathbun's company buys bananas from? A. At that time he was a merchant at Colon. I don't think he had any dealings with Rathbun or the Aspinwall 1763
Fruit Company.

Q. Does he own groves himself, or is he simply a dealer who buys them up inland? A. That is beyond my knowledge.

Q. How are you able to think that he didn't have any engagements with Mr. Rathbun at that time? A. I don't think he did, from what I heard. Had I thought he had I certainly shouldn't have allowed Svensson to employ him, because we were competing with the Aspinwall Fruit Company very bitterly. 1764

Q. You instructed Svensson whom to buy the fruit from, did you? A. No.

Q. You have just said something about authorizing Svensson to employ him; what did you mean by that? A. Svensson had been there the trip before this voyage 8 and had seen Maduro. I think that was the first way we got hold of Maduro—and recommended Maduro to us. I think on that voyage 8 he was sent out —I am not very clear on it—with instructions to get his cargo either at Bocas del Tora or at Colon, and he

1765 decided to buy at Colon and buy it through Maduro. But if he had seen fit to employ any other agent he could have done it ; he had full authority.

By the Commissioner :

Q. These invoices that you have produced here are invoices that the captain returned to you ? A. Yes, sir ; the first one the Captain brought to me in settling up. I think I gave him about $5,000 ; then he had drawn drafts for the balance of the cargo, and in ac-
1766 counting to me for the drafts and money he turned over this invoice to me as accounting for the money.

Q. Now about the other one ? A. The other one my brother did about the same thing.

By Mr. Kirlin :

Q. What kind of currency is used in the prices set out in these invoices ? A. Mexican.

Q. The first cargo appears to have cost you, according to the invoice $8,401.60 ; that is Mexican dollars is it ? A. That is Mexican currency.

1767 Q. How much would that be in American currency ? A. I don't know what exchange was then ; probably abont 2/3 of that in U. S. dollars.

Q. About 62 or 63 cents to the dollar ? A. I don't remember ; you can call it roughly about 2/3 of one dollar to each dollar there. It may be figured out on the paper.

Q. 60% premium ? A. Yes, sir ; that would be about 64 cents.

Q. What kind of dollars did you give the captain,
1768 $5,000 ? A. Mexican.

Q. And he drew a draft on you for $2,126 ; what kind of dollars were those ? A. I don't know ; in all probability he drew on us in American dollars.

Q. That was meant to equal $3,401.60 according to the invoice ? A. If that is in the invoice, I have no doubt it is correct.

Q. How much of the first cargo do you say you had sold to arrive ? A. About a third.

Q. Did a third of the first cargo arrive in merchantable condition ? A. No.

Q. How much of it did arrive in such condition that 1769
you made tender of it under your sales to arrive? A. I can't answer that without the paper you are looking at. (Exhibit 1.)

Q. Did any of it arrive in merchantable condition on voyage 8? A. What do you mean by merchantable? Every bunch for which there is any value is merchantable.

Q. So that it could be sold and disposed of without spoiling; that is what you call merchantable, I suppose? A. I think 9,143 you have got there were sold 1770
or consigned; those were all salable.

Q. Did you make any deliveries out of that cargo under your sales to arrive? A. Yes, sir.

Q. Did you get the prices you had contracted for? A. In some cases, yes; in other cases we had to make an allowance; in other cases we had the goods turned down on us, as we say, and they sold them for our account. But I don't believe if any of those buyers to whom we shipped it had seen the cargo out of which we took the fruit they would have accepted it, because 1771
there is a great prejudice against fruit taken out of an over-ripe cargo. And some of our sales to arrive were cancelled when we telegraphed it was a ripe cargo; or our people came here and saw it was a ripe cargo.

Q. How far off were those consignments to go for which sales to arrive had been made? A. Do you mean the shipments or the consignments?

Q. The shipments under the sales to arrive? A. I think I had some Michigan points in there and part to Toronto. I don't know whether I shipped it there, or 1772
whether it was cancelled. I think those are the furthest points.

Q. And the intermediate points were what? A. Zanesville, O.; Williamsport, Pa.; Buffalo, N. Y.; Bay City and Saginaw, Michigan; Toronto, Danville and Lynchburg, Va.; Wilkes Barre, Penn.; Portland, Me. Then there was a lot in the city. Port Huron, Mich.; Elmira, N. Y.; Roanoke, Va.; Salamanca, N. Y.; Elizabeth City, N. C.; Olean, N. Y.

Q. Those were points at which some portions of this

1773 cargo were taken in fulfilment of purchases to arrive? A. Yes, sir; the goods were sold to these people to arrive and we took out of the cargo what we thought might go safely and put it in.

Q. You had sold a portion of the cargo that came on voyage 9 to arrive, hadn't you? A. Yes, sir.

Q. To what places were the shipments under those contracts to be made? A. Lima, O.; Newcastle, Penn.; Port Huron, Mich.; Toledo, O.; Scranton, Penn.; Easton, Penn.; Lynchburg, Va.; Bay City and Sagi-
1774 naw, Mich.; Columbus, O.; Zanesville, O.; Plainfield, N. J.; Stroudsburg, Pa.; Mansfield, O.; Malone, N. Y.; Honesdale, Penn.; Schenectady, N. Y.. Hornellsville, N. Y.; Winston, N. C.; Cortland, N. Y.; Sherman, N. Y.; Waverley, N. Y.; Pine Plains, N. Y.; Bridgeport, Conn.; Washington, N. J.; Easton, Penn.; Oswego, N. Y.; Marion, Ohio.

Q. What variation was there in the prices of firsts on those sales to arrive on Voyage 8? A. $1.25 to $1.50, depending upon the selection that we intended
1775 to give a man.

Q. Was there any difference in the price on account of the distance to which the fruit was to go? A. No; it depends entirely on how particular a customer we had.

By Mr. Putnam:

Q. Were these prices here in New York f. o. b. without any freight? A. Yes.

Q. The customer paid the transportation in each
1776 case? A. Those are the sales to arrive you are asking about, Mr. Kirlin. I think I sold some firsts higher than that after the cargo got in in a retail way, 1⅛. I don't know whether that sale was made to arrive or not, but I rather think it was.

By the Commissioner:

Q. After it arrived did you say that was made? A. Yes, sir; we sold some fruit 1⅛; two or three small lots, I believe.

Q. Was that after you had seen the fruit? A. Yes, sir. That was on cargo No. 9. If we should take a

lot of 25 or 30 nice bunches out of the cargo we should not slaughter it because the cargo was ripe. 1777

By Mr. Kirlin:

Q. What was the variation on the contract price under sales for firsts that you had made to arrive under Voyage No. 9? A. 1⅛ for the top.

Q. That was some that you sold on the spot here? A. No; you are asking about sales to arrive.

Q. I understood you to say a moment ago that those 1⅛ sales were made here after they arrived, you didn't know whether it was in the city or not? A. That is also true. In addition to that on Voyage 9 we made some sales to arrive 1⅛. 1778

Q. What ones were those? A. G. W. Kelly. No, I shall have to qualify that. That is the same sale I referred to. That was not sold out of town, and therefore probably was made after the ship got in.

Q. Could you conveniently make a list of the prices at which those contracts of sales to arrive were made? A. Yes. 1779

Q. On both voyages? A. Yes, sir.

Q. What proportion of these bananas did you actually sell in New York on Voyage 8? A. Do you mean to people living in New York or for shipment from New York?

Q. No, sold in New York? A. Excluding out of town buyers who came on, 667, 386, 40, 43, 9 and 63 boxes.

Q. Were those sold sound or were those damaged? A. Damaged. 1780

Q. Did you sell any of the sound in New York or did you ship all the sound and that was in good condition under your contracts to arrive? A. I think we did ship all the sound. I have not much positive remembrance about it, but judging from this sheet I should say we had shipped all the sound we could get and sold the rest here in the city and consigned them.

Q. You spoke of some of the buyers having come on? A. Yes.

Q. Do you mean by that some of the buyers to ar-

1781 rive? A. Oh just happened to be here in the city I mean.

Q. They saw the fruit before they accepted it under their contracts, did they? A. Yes, sir.

Q. Who were some of those? A. Dixon Brothers of Hamilton, one of the brothers was here, and we sold him 350 bunches; but he saw the fruit and cancelled it. That was on Voyage No. 8. Then on Voyage No. 9, J. Ferrara was on here and saw some of his fruit. He took a small lot, 140.

1782 Q. From where? A. Pittsburgh, Washington and Richmond, Va. I don't think that was sold to him to arrive; but it may have been.

Q. Had you sold any of this cargo to arrive to dealers in New York? A. No; that is unusual.

Q. Your estimates as to market value of bananas in New York at this time are based upon your contracts of sales to arrive, are they? A. Very largely. We use our knowledge of the market to fix the price at which we are willing to sell to arrive; so it works both

1783 ways.

Q. What is the market the knowledge of which you use in fixing your prices in contracts to arrive? A. The knowledge of the market is the only way I can translate it; the knowledge of what bananas are selling for, what the demand is; what the supply is likely to be; all the different details.

Q. Who else were importing Aspinwall bananas at that time, at the time of the voyages 8 and 9? A. Nobody but the Aspinwall Fruit Company.

1784 Q. Was your knowledge of the market based on what they were getting at that time? A. No, not particularly; not any more than what the others were getting; what the market was.

Q. Is there any difference between the market value of Aspinwall bananas and any other bananas? A. Yes, sir.

Q. What is that based on? A. Quality.

Q. Which is the higher priced? A. Aspinwall are about as high, higher than any others I think; were at that time.

Q. Then if you and the Aspinwall Fruit Company were the only importers your knowledge of any other market except the knowledge derived from sales of your own cargoes must have depended on what they were getting, mustn't it? A. To a certain extent; not altogether. 1785

Q. What else? A. I know if a poor bunch sells for a dollar, a good bunch sells for a proportionately higher price. If a good bunch sells for fifty cents, the poor bunch will sell lower.

Q. You mean by that, I suppose, that you use your knowledge of what bananas from other places are bringing in order to estimate what bananas from Aspinwall bring? A. Yes; besides that there are a thousand other things enter into the consideration of what price to ask for bananas or what price to fix for market value. The supplies of other fruit; the weather; the time of the year. 1786

Q. There were no other sales of Colon bananas, I understand it, except sales made by you and sales made by the Aspinwall Fruit Company along about that time? A. That is right; have not been for a number of years. 1787

Q. According to the invoice in both cases there were a large number charged for as firsts which you dealt with here as seconds? A. Yes, sir.

Q. Did you make any claim on Maduro for charging you for firsts which ought to have been seconds? A. I don't think Maduro did it.

Q. You said the classification here was stricter than it was down there? A. Unquestionably. 1788

Q. That means that some were sold to you for firsts which ought to have been sold to you for seconds, doesn't it? A. Not at all; just the reverse.

Q. It means that some that were sold as seconds ought to be charged for as firsts? A. No. The classification in every fruit producing port is far easier than it is at any fruit importing port. There isn't a country that sends fruit to New York where firsts that passed in that country as firsts will pass for firsts in

1789 New York. No importer expects to get as many firsts out of a cargo as what he pays for.

Q. You gave a very heavy percentage? A. I did; I gave a very heavy percentage of seconds out of firsts.

Q. Then you paid 35 cents more in one case and 42 cents more in the other for firsts than you did for seconds; you made no claim on Maduro at all? A. Claim for what?

Q. For improper classification? A. For the first voyage I had the captain and his officers there to see
1790 that I got the classification that Maduro claimed he delivered. On the second voyage my brother was there, and the same set of men; that classification is based on the number of firsts and seconds tallied into the ships by the ship's officers; it would be preposterous to make a claim on Maduro.

Q. The point is whether you actually made any deduction on these drafts? A. It is not quite feasible to make a deduction from drafts.

Q. Did you? A. No.

1791 Q. You weren't down there, you don't know what tallies were made or whether any tallies were made of your own knowledge, do you? A. Of course not. It is entirely hearsay.

Q. When you state there were 4252 bunches shipped not landed, you base this, of course, on the difference between the invoice and the output? A. Yes, sir.

1792 Henry E. Wessels recalled:

By Mr. Putnam:

Q. You were down there on Voyage No. 9. What did you see as to the tallying in of the fruit yourself? A. The captain and ship's officers tallied in every bunch of bananas that went into the ship.

Q. When it was all loaded it was rendered to you? A. The captain brought the tallies from the two mates, and his own; we footed them up together, and I paid for the cargo on that basis.

Q. And you paid the amount mentioned in Libellants' 1793
Exhibit 3 ? A. Yes, sir.

Q. Do you know whether Mowbray was present ? A. Mowbray was present.

Q. Do you know whether he made any tallies ? A. He helped them tally when the mate and second mate went off to lunch or to get meals, he took their place.

CHARLES T. WESSELS recalled: 1794

By Mr. Putnam :

Q. Have you prepared the two lists asked for by counsel for the claimant at the last hearing ? A. I have.

Q. Do you produce them ? A. I do.

Q. Is there a separate list of voyage No. 8 and voyage No. 9.

Q. Yes, sir.

The lists are offered in evidence and marked respectively " Libellants Ex. 1 and 2 " of this 1795
date.

Q. Can you give a summary of the number of bunches on each voyage that you had contracted to sell to arrive, and the number of bunches that you actually delivered in the attempt to carry out those contracts ? A. I can.

Q. Will you give that first as to voyage 8 ? A. On voyage 8 we sold to arrive 4,195 bunches ; we shipped on those orders 845, which went through without 1796
trouble. On voyage No. 9 we had sold to arrive 6,540, of which 1,814 went through without trouble. This includes one sale to arrive of 100 bunches on which we were able to ship only 69.

Q. The remarks on those exhibits in red ink show what was done where the goods shipped were either not received or which you had what you call trouble in disposing of them ? A. They do ; and in addition to that they show where we didn't ship at all on the orders.

1797 Q. Both of these exhibits are made up by yourself and in your own handwriting? A. Yes, in my own handwriting and made up by me.

Q. Referring to your testimony on the trial as to the weight of the cargo, and to page 138, where it was said the freight was a cent a pound; what cargo was it that you have reference to that was a cent a pound? A. The cargo received in Greytown.

Q. For what transportation was the freight a cent a pound?

1798 Objected to as immaterial, the only question here being a question of damages; claimants' counsel moves to strike out the question.

Motion denied.

A. From Granada, or the Granada district rather, in the interior of Central America, to London, and I think perhaps some continental ports.

Q. It was a through rate? A. It was.

1799 In lieu of issuing a commission to examine Isaac L. Maduro in Colon, as to the classification and number of bunches shipped on both voyages of the *Ceres*, it is admitted that he would testify, if examined, in accordance with the invoices and that no commission need therefore be issued.

Cross-Examined by Mr. Kirlin:

1800 Q. The grade of bananas, or the classification into firsts and seconds at Colon has no relation to the condition of the fruit as regards ripeness; but only to the number of hands on a bunch, as I understand it? A. Your understanding is right.

Q. On these exhibits, Libellants' 1 and 2 of July 12, 1894, certain entries appear opposite the names, as allowances made; what do those entries mean? A. Do you refer to any one in particular?

Q. I refer to Libellants' Ex. 1, shipment to East Saginaw, and another shipment to Bay City? A. That means that when the fruit got there the con-

signees refused to accept it at the price it was billed 1801
at, and that an allowance was made in order to induce them to take it; that is my recollection at present.

Q. How were all these bananas shipped from New York? A. All of them were shipped in various ways; by railroads.

Q. In box cars in both voyages where you shipped out of the city? A. None in box cars.

Q. What kind of cars? A. That I don't recollect; presumably either refrigerator cars on the first voyage or in the Eastman heater cars; on the second voyage 1802
probably either refrigerator or ventilator cars.

Q. Have you any means of knowing how long it was after the fruit left New York before it arrived at the various destinations? A. Not now.

Q. How promptly did you put it in cars? A. As quickly as we could.

Q. What does that mean, in days? A. That would be measured in minutes, not days; hours at most.

Q. Do you mean that you got it on board the cars on the same day it was discharged from the ship? A. 1803
Yes, sir.

Q. Would that answer apply to both voyages? A. Yes; your question refers to the items on the sheet you have.

Q. I refer to both sheets; both voyages. I notice opposite some of the names, the entry "too ripe, not shipped." For instance, opposite the sale to M. Carpenter, of Buffalo; and that other contracts at more remote distances appear to have been filled, or attempted to be filled; why was that? A. I don't know. 1804

Q. Was it on account of the price at which you had sold the goods to arrive? A. I don't believe that it had anything to do with it.

Q Why was it, according to your recollection, that you preferred some of these gentlemen over the others? I haven't any recollection about that.

Q. You had outstanding contracts on both voyages, say for more good fruit than you could supply; what system did you adopt in the fulfilment of the contracts? A. I don't remember; it is over two years ago; the

1805 only recollection I have is that we did the best we could.

Q. Did you ship to those persons who lived nearest to New York, rather than those who lived farther away, so that the goods would be more likely to arrive in good condition? A. To answer that properly would take a little time; nobody knows when working a ripe cargo or an over-ripe cargo exactly how much shipping fruit they are going to get out of her, until the cargo is discharged; it is impossible to estimate
1806 when you begin discharging how much shipping fruit you will get out of the cargo.

Q. I suppose you had a list of your contracts which you had when the ship arrived? A. Certainly.

Q. Did you begin at the top of the list in fulfilling your contracts? A. I don't remember; probably.

Q. That would be the natural way, wouldn't it, if you had a list of contracts and you didn't know how much fruit you were going to get? A. It would depend upon where the different floats were; which
1807 hatch was working on the floats and which on the dock, and how the fruit was running at that particular time; you would simply do your best to make both ends meet.

Q. That means that you fulfilled these contracts without any design to ship to certain purchasers rather than to others? A. We had no premeditated design on that point.

Q. You didn't attempt to ship to the people who resided nearer New York rather than those at a greater
1808 distance? A. That I can't answer you without looking at the list; ordinarily we would ship fruit which is out of a ripe cargo to just as near-by points as we could; if we could ship to 200 instead of 480 miles we should ordinarily prefer to ship to 200 miles; but I haven't a positive recollection as to that.

Q. You had sold some of these fruits to arrive at considerable larger prices than other portions of it? A Yes, the prices varied.

Q. The variation was as much as thirty cents on firsts a bunch, on voyage No. 8, was it not? A. I

think you are right; but I can't answer definitely 1809
without the list.

Q. Why should there be such a large difference as that? A. The man who got the fruit, or the man to whom we sold the fruit, got thirty cents less value than the other man; we made as good a sale as we knew how; we know our different customers and adjust our prices Then the brokerage makes a difference in some cases; brokerage is deducted from the contract price given in that list, when we sell through a broker. 1810

Q. What brokers do business in bananas in New York. A. I wasn't referring to New York brokers.

Q. What brokers were you referring to? A. Out of town.

Q. What firm of brokers did you deal with in selling any of the cargo on voyages 8 or 9? A. J. O. Asmon & Sons, Bay City, Mich.; R. H. Humphreys, Columbus, Ohio; I think that is all; they are the only two men who made sales on those cargoes.

Q. Were their operations limited to their own states? 1811
A. No; but they are limited to their own territory.

Q. What was the territory of each with these two cargoes? A. Humphreys was our sole agent for Ohio, Indiana, and West Virginia and Illinois. Asmon was confined to Michigan.

Q. What would the brokerage amount to? A. Five cents a bunch.

Q. Were these gentlemen entitled to commissions on all the bunches sold in those states, irrespective of whether they negotiated the sales or not? A. I don't 1812
think they were at that time. They are at present.

Q. I don't suppose you could tell from recollection whether these contracts were arranged through them? A. I could make a guess at it; a pretty clear guess I think. The sales through Humphreys were to Bloomer, Marzetti. I think that is all he sold; he may have sold J. M. Clark of Massilon, Ohio. Through Asmon, the sales in East Saginaw and Bay City were made. Through M. R. Mathewson & Son of Detroit, there were sold to Alfred Rush and Ayres and Reynolds.

1813 Mathewson was then our broker in Detroit; his territory limited to Detroit; that is on voyage 8. Voyage 9, through Humphreys, Bloomer, Krug, Thornbury, and Seal, Cardosi Bros., Jackson, Lee & Company; through Asmon, the sales in Bay City. Those are all I think that were made through brokers on that voyage. Of course you will understand this is given from recollection only and may not be strictly accurate.

Q. How many bunches did you sell otherwise than through the gentlemen named on these lists? A. The
1814 balance between what I have called off and on those lists.

Q. Did you sell any bananas and, if so, how many to other people than those to whom you contracted for sales before arrival of the vessel? A. Yes, sir.

Q. Where were those other sales made? A. On voyage No. 8 we shipped some small orders which came in after the arrival of the vessel, which are not included in the sales of goods sold before arrival; although the orders were mailed before the vessel arrived
1815 probably; then we sold some on the vessel the day she came in; then we sold some out of the store and shipped some orders that came into the store; these are around the time the vessel arrived; the same answer would apply to voyage No. 9.

Q. That doesn't show on the face of it where these people lived, does it? A. No; I can give that pretty well.

Q. Will you just state please again, if you have already done so and, if not, tell us for the first time what
1816 your contracts called for? A. Bananas of certain grades.

Q. Over the side of the ship on lighters, f. o. b. on the cars, or how? A. Some f. o. b. at the railroad; some plus cartage at the railroad; some packed up and delivered at the railroad plus packing and cartage, or at the price of fruit packing and cartage included; I think those are the only ways in which we sold bananas at that time.

Q. You have given an estimate of the market value

of bananas at that time; what did that estimate in- 1817
clu le? A. I don't understand.

Q. You said the market value of sound bananas in New York at the time these arrived was a certain price; what do you include in that price? A. Why, the bananas.

Q. Did you include any of the elements that are included in your sales to arrive? A. No.

Q. What did you include? A. Why, the bananas; simply the bananas delivered out of the ship.

Q. They must have been put ashore? A. Certainly. 1818

Q. In store? What do you mean; the price where? A. The price alongside the ship.

Q. Is there a market value in New York for bananas alongside the ship? A. Why, of course; that is the way most of them are sold.

Q. Did you sell any alongside the ship except those that you know you couldn't send away to fulfil contracts with? A. No, I don't think I did.

Q. How was the sale alongside the ship conducted? A. When the ship is reported at Sandy Hook we send 1819
notices around to the trade that the ship will go to work at a certain time, a certain hour; that is the custom of all the trade; the buyers come down to the ship; they usually get there about the time she begins to discharge; and then they wait around and buy bananas; if they buy in trucks we charge so much for cartage, usually 2½ to 4 cents a bunch. If they buy in cars alongside the ship the fruit is put in the cars for them, usually without extra charge.

Q. Where you have stated that your prices were 1820
for bananas delivered on board railroad cars, did that mean on car floats alongside? A. Yes, if the floats were there; you can't gets floats for every railroad; some you have to cart to the railroad station; in case we cart them we charge extra.

Q. Do these prices at which you have sold these goods to arrive, were they any different from what you would have expected to get if they had been sound and you had sold alongside the ship? In other words, did you include in your contracts of sales to arrive any

1821 expenses that you wouldn't have incurred if you had sold the goods alongside the ship? A. No, sir; except the brokerage which I have deducted in making up the lists.

Q. So that on these contracts, if you had had to pay any cartage because you couldn't get cars alongside, the contracts would have carried the cartage in addition to these prices that I have here? A. Yes, in these cases I have simply treated the fruit, not any expenses which might have been incurred on it.

1822 Q. Were these gentlemen with whom you had contracts of sale to arrive former customers? A. Oh, yes; I should say so; I have no doubt of it.

Q. What bananas had you been supplying them before you began to import Aspinwall bananas on voyage 8 of the *Ceres*? A. Jamaica and Honduras.

Q. Was there anything in these contracts about where the fruit was coming from? A. Yes, sir.

Q. You haven't any of those contracts accessible at this time, have you? A. There are no contracts.

1823 Q. What were they? A. Offers and replies.

Q. How would they come to be addressing you on the subject of a change of the grade of fruit? A. In reply to our letters addressing them on that subject.

Q. This means offers on your part, then? A. Why, certainly; that is the custom of the trade.

Q. These offers were based on the supposition that you were going to get the same kind of fruit that the other importers from Aspinwall got, I suppose? A. Well, yes; practically that; we offered them Aspin-

1824 wall fruit and they knew what had been put out here as Aspinwall fruit; that was the basis of it.

Q. And your prices were influenced by what the Aspinwall Company were getting at that time? A. To a certain extent, yes.

Q. Anything more? A. Oh, yes; our idea was to get as much as we could; if the Aspinwall Company was getting a dollar and I could get a dollar and a half I would.

Q. If the Aspinwall fruit would sell for a dollar that would have been the market price? A. No, sir. not

necessarily, not if I could sell for $1.50; our effort was 1825
to get all we could.

Q. These two lists show the practical results of those efforts? A. Yes, that is the black ink part of it does; not the red ink.

Q. That part of them which gives the prices at which you had arranged the contracts? A. Yes.

Re-direct-Examination by Mr. Putnam:

Q. Can you state what railroad companies furnished car floats to take bananas here generally at the time of 1826
these shipments? A. The Pennsylvania and the Lehigh Valley were those that usually furnished floats; some of the other companies could, but it was not usual to get floats from them.

Libellants Rest.

William L. Rathbun, recalled by claimant:

By Mr. Kirlin: 1827

Q. What is your connection with the Aspinwall Fruit Company? A. I am president of that company.

Q. Your company is at present the sole importer of Aspinwall bananas? A. At this present time, yes.

Q. You have been importing a great many years? A. A number of years.

Q. And were importing at the same time the *Ceres* brought these two cargoes for the Messrs. Wessels? A. I was in 1892.

Q. Did you have steamers from Aspinwall in April 1828
and May of that year? A. Yes.

Q. Did you have firsts and seconds and thirds in April? A. No thirds; firsts and seconds.

Q. What was the average market price in New York of firsts in April? A. I have tried very hard to get at it as accurately as I can; I can't give you the exact figures. I can give the result of the total sales of each cargo, firsts and seconds, and the average per bunch of that cargo. In April the cargo sold at an average of 69 5/8 cents per bunch, firsts and seconds.

1829 Q. Can you give any idea of the proportion of firsts and seconds there were on that voyage? A. There were 4138 firsts; 7433 seconds.

Q. Were there any thirds or docks? A. No thirds; the docks are made up from the firsts and seconds that spoil.

Q. In giving those numbers as you have of firsts and seconds, is that as classified here or as classified by the invoice? A. As purchased down there.

Q. Do you make any different classification here?
1830 A. The classification made here is large green and large ripes, small green and small ripes. Those are the four different kinds.

Q. The firsts and seconds as you have quoted them there are as per invoice? A. Yes.

Q. Give me the results, if you please, of a voyage in May? A. 8343 firsts, 13381 seconds; sold at an everage of 73¾c per bunch, firsts and seconds together.

Q. Can you give me about what the average was of those different classifications as you have given them
1831 there? A. I tried to take them out of the book, and just as my eye would glance at a certain customer, he has the largest discount though of any of the rest, $1.50 less 25c. large green; $1.25 less 25c. the large ripe; the seconds, that is, what we call small greens, 85c. net; small ripe, 65c. net.

Q. What voyage was this? A. The April voyage. I didn't take one off for May, except in May the large was 12½c. more and the seconds were 5c. more. The price here had advanced.

1832 Q. At what date in April did the cargo that you describe arrive? A. The first cargo arrived April 12th.

Q. And the cargo in May that you have given? A. May 11th.

Q. Were those the fair average market prices in New York at that time? A. That was the cheapest price that we got at that time. Others that bought did not get as much discount as this one man that I picked out here, Mr. Lester; he was the largest buyer and got the largest discount. Others did not get so much discount as that. As I told you, it would take so long to

find out exactly what those discounts are; but that is 1833
the cheapest that we sold and received at that time.

Q. All the other prices were as you have given first, some of them with different discounts? A. Yes, sir.

By Mr. Putnam:

Q. A less discount? A. The others got a less discount; the others really paid more for the fruit.

By Mr. Kirlin:

Q. I suppose the average discounts on the whole cargo wouldn't vary more than five or ten cents? A. 1834
No, it would average I guess five cents; in some cases a little more.

Q. You saw Messrs. Wessels' cargoes on one occasion? A. Yes, the last one.

Q. If it had been in good condition, how much less than yours do you think it would have sold for per bunch? A. I judged the quality of the fruit was worth about ten cents a bunch less than ours; I think that is what I stated before.

1835

Cross-Examined by Mr. Putnam:

By the Commissioner:

Q. Ten cents a bunch less than these you have mentioned as received in April and May? A. Yes, our quality was better than theirs, although they had thirds; we had no thirds.

By Mr. Putnam:

Q. Did you have a cargo that came in nearer than April 20th than what you have given? A. Had a 1836
cargo April 21st.

Q. What steamer was that? A. *Colon.*

Q. Have you the figures there to show what those prices were? A. Yes; 6,607 firsts, large; 11,491 seconds; and they averaged 68½ cents a bunch; that is, both firsts and seconds.

Q. Did you have a cargo arriving in the latter part of May later than the one that you gave? A. We had three cargoes in May; May 11th, 20th and 24th.

1837 Q. Can you give us the figures in the same way of the cargo arriving May 20th? A. Yes, the *Colon*. 4,789 large firsts; 7,871 seconds; they sold at a much better average; 75⅜ cents per bunch.

Q. From what do you compute those averages, on the total number invoiced, or on the number turned out here? A. On the total number of invoice; what we paid for.

Q. Can you tell what the price was of firsts that you sold your best of the May 20th cargo? A. Yes, the
1838 large green firsts sold for $1.62½, less the discounts that are given to the different ones. For instance, this Lester gets 25 cents; that would be $1.37½ net.

Q. Others got a smaller discount, I suppose, the same as in the previous cargoes? A. The same, in proportion to the number of bunches that they buy.

Q. Was there an advance in the market between May 12th and May 20th? A. Yes, there was.

Q. I suppose the fruit arriving on May 20th was similar to that that arrived on May 12th? A. About
1839 the same, yes.

Q. Was the price of the lower grades about the same increase as was of the firsts? A. The same in proportion; 5 c. on the seconds; 12½ c. on the firsts.

Q. Will you tell us a little more clearly what you mean by large greens and large ripes? A. The two selections, as the bananas are passed out of the ship. There is a man standing there, and if a fine, large, clean bunch comes out that is green, he says "green," and it goes in that truck; if the same size bunch comes along
1840 and the bananas are thinner, or if the bottom hang is a little ragged, or some of the bananas have been knocked off, or if the bunch is bruised, that can't go as a first; that goes as a large ripe and goes in the truck this side.

Q. Out of the Aspinwall firsts you make two grades of firsts then? Large greens and large ripes? A. Yes.

Q. And both of those sold for over a dollar in all these cases, didn't they? A. Yes.

By the Commissioner: 1841

Q. Do either one or both of those absorb all that are invoiced as firsts? A. No. At the end of the cargo there are always some bunches left in the ship, nothing but the stalk; they are taken out in boxes.

Q. But they don't go into seconds? A. No, docks. Sometimes the bunch is too ripe to ride, to put on the truck; it is put on the dock; what they call docks.

Q. Is your system of dividing into large green and large ripes something peculiar to your company, not done by others? A. I don't know. But I think there 1842 are very few others that select as we do.

Q. Except to this customer, Mr. Lester, isn't your usual discount ½ on the sales that you gave of the large fruit? A. Yes; ½ is the ruling discount; but Mr. Lester is not the only one that receives 25c.

Q. But they are comparatively few in relation to the others? A. Yes. It is all governed by the state of the market.

Q. Is it a fact that you sell to some extent to jobbers and to a smaller number of customers and average the 1843 prices somewhat between the good season and the scarcer season or bad season? A. There are some customers that when the market advances we do not advance the price on those people; but on smaller buyers we take the advantage of the price as it increases. Then in the bad time of the year those same people that buy all the year round, they pay more of a uniform price.

Q. Because they are permanent customers? A. Yes. It averages itself up. The market goes way 1844 down in the winter time. We don't go way down with Mr. Lester—taking him as a standard. Sometimes really people will buy a little cheaper than he will; but it is an understood fact that he receives the benefit in the time of the year when the bananas pay a better profit, and he is perfectly satisfied.

Q. You speak of the good season and the bad season; which is at the end of April and beginning of May? A. That is the good season.

Q. Is there usually an advance in prices in the month

1845 of May? A. In May the market is generally the best; prices rule higher.

Q. I think you testified at the trial that you only saw Mr. Wessels' fruit by looking down the hatch on that steamer that you visited? A. Yes, I remember she was at the dock, and they had started working I think about half an hour, and I saw them pass out some, and I looked down the hatch and she was pretty ripe.

Q. That was all the examination that you made of
1846 her? A. That is all. I made up my mind that it was a bad case.

CHARLES T. WESSELLS, recalled:

By Mr. Kirlin:

Q. You stated that the freights which you received for the whole cargo carried on both these voyages was
1847 one cent a pound through; that is from down in Central America to Europe; wasn't that right? A. No, I don't think I testified that we received it; I think I testified that was the freight.

Q. What was your arrangement about that freight; with whom were you operating, sending through freight? A. With the steamship line operated by the Nicaraugua Canal Company in Central America, and by the Canal Company, so far as lighterage in Greytown was concerned; then our line formed the link to
1848 New York; and then the various transatlantic lines formed the links either to the United Kingdom or to the Continent.

Q. When you delivered in New York, what did you do about collecting freight? A. I think the freight was collected at the destination on the European goods; we received our proportion of it; on goods delivered in New York City we collected the freights here on delivery of the goods, and paid over all but our proportion.

Q. Was all of this freight that came on both voy- 1849
ages through freight? A. From Greytown; yes.

Q. To New York? A. To New York.

Q. New York was the destination of the whole cargo, was it? No; not on through freight.

Q. Was it all through freight? A. No. I think there was some came to New York; some of it was through freight from the interior of Central America to New York; other of it was through freight from the same place to London, England, and the Continent.

Q. You said it was one cent on everything? A. I 1850
said one cent on the coffee.

Q. What was it on the cargo that came from Central America to New York? A. I think the rate was practically the same, but I am not very clear on that. I believe the difference was very trifling whether the freight came to New York or whether it went to the Continent.

Q. What was your proportion where it went to the Continent? A. The same as where it went to New York; about $4 a ton. I think our rate figured 1851
roughly would be about 1/4 or 1/5 of the through freight. The Colon Company's steamboat line took the major part of it.

It is consented that all the trial evidence and exhibits shall be considered as before the Commissioner.

1852

1853

Lbts.' Ex. 1.—July 2/94.

SALES CARGO No. 8.

S.S. "CERES."

		Run Mixed Ripe.	1sts.	2nds.	3ds.	Decks Ripe.			
	Efind & Bro.				25			57½	14 38
	J. T. Ross		5	5			1⅛	1⅝	13 75
	E. P. Bloomer		30	30			1.20	80	60 00
1854	H. T. Nugemach		30	30			1.25	85	63 00
	A. Nardi				60			50	30 00
	M. Carpenter			300				90	270 00
	A. D. Spangler & Co.		100	75			1.30	85	193 75
	Borden & Drysdale		90	80			1.30	85	185 00
	Buck & Leighton			100				85	85 00
	Perkins & Houghton			60				85	51 00
	Logan & Carroll		10	50			1.30	85	55 50
	J. Cleghorn & Son a/c ripe		100	300			1.45	90	415 00
	Wm. Navel, reduced price, 50c.				400			35	140 00
	W. Jennings, Watson & Co.		101	62	38		1.25	80 & 50	194 85
	A. Gill					432		50	216 00
1855	C. Broad & Co.					423		57½	243 23
						431			
	P. Maniscaler					236pd.		40 & 20	219 60
	Motley & Co., per act. a/c for		150	200	100				
	sold at 1.50, 90 & 50 rejected, old								165 98
	A. Vincenzo				386			60	231 60
	Otten & Flagge		2	3					7 00
	F. K. Keller			1				90	90
	A. W. Curtis			6	28		70	11⅛	26 35
	Hudson & Deal				7				5 75
	H. Freund				30			60	18 00
	W. Canhain				200			60	120 00
	F. A. Kelton				60			50	30 00
	B. F. Allen			25			1		25 00
1856	Palmer & Jones			25			1		25 00
	G. Lester & Co., 63 Boxes								78 75
	Weatherly & Twiddy			10					10 00
	Losee & Graham			3					4 25
	Adams Bros		3						5 65
	E. J. Chase		1						1 90
	Ryder & Corley			2			1 25		2 50
	J. D. Goodsell			36			90		32 40
	G. Reisser			5			1		5 00
	Total		622	1408	1334	1522			$3246 09

LIBTS.' EX. 1.—(*Continued.*) 1857

	Run Mixed Ripe.	1sts.	2nds.	3ds.	Decks Ripe.			
Forward.....		622	1408	1334	1522			3246 09
Otten & Flagge		1	2			1.50	1	3 50
Ryder & Corley.....			1			1.25		1 25
Sigourney Bros.....			5				90	4 50
Spangler & Davis, overrun.....			2				80	1 60
Buck & Leighton.....	80							60 00
J. Ferren.....	400							166 06 1858
J. Dughi.....	1215							360 00
F. Ritterhof.....	361							154 34
Cash Sales.....	2190							950 86
	4246	623	1418	1334	1522			

Total Bunches..... 9143 4948 20

Less allowances made:

Spangler.....	22 50	1359
Borden & D.....	21 50	
Buck & Leighton.....	10 00	
Perkins & H.....	6 00	
Logan & Carroll.....	6 50	
H. T. Nugemach.....	36 56	
H. Freund.....	3 00	
W. Canhain.....	40 00	
		146 06
Nett.....		$4802 14

1860

1861 LBTS.' EX. 1.—(*Continued.*)

	Run Mixed Ripe.	1sts.	2nds.	3ds.	Decks Ripe.			
Forward	400	626	1747	818	4302			4806 18
E. J. Chase		1						2 00
S. Becker		2	40				85	3 75
Wessels Bros.			6			1.25		31 00
Rovegno				24			75	7 50
T. R. Uhlein		2						18 00
White		6				1.50		3 63
1862 T. McKeefe								9 00
D. D. Lang			60				80	48 00
J. D. Goodsell				42			75	31 50
W. W. Corriell				12				9 00
J. Dughi	2031							753 34
J. Ferris	3775							1607 52
Marion Fruit Co., reduced from $93.00	100							79 75
Cash Sales	671							350 38
	6977	637	1853	896	4302			7763 55

Total Bunches 14,665

1863

Less allowances :

Perkins & H., 1 bch. short	81	
A. W. Curtis	10 00	
Kelly	5 00	
H. Freund	3 75	
White	22 50	
Perkins & H.	17 50	
		59 56
Nett	14,664 Bchs.	$7703 99

1864

LBTS.' EX. 1.—(*Continued.*) 1865

SALES CARGO No. 9.

May 16–17, 1892. S. S. "CERES."

	Run Mixed Ripe.	1sts.	2nds.	3ds.	Decks Ripe.				
J. N. Price & Co.			100				75	75 00	
Cardosi Bros.			60				85	51 00	
Holland			25				95	23 75	
W. Canham			400				80	320 00	
Jackson, reduced from 1.40 & 90c.		162	215			1.20	80	366 40	1866
Broad Fruit Co.	400						60	240 00	
W. L. White				153				97 50	
E. W. Boyd			150				90	135 00	
J. Ferris				140			55	77 00	
Perkins & Houghton			175				75	131 25	
Buck & Leighton		25	75			1.15	75	85 00	
Logan & Carroll			69				75	51 75	
E. L. Hendrickson		300				1.20		360 00	
A. W. Curtis				100			60	60 00	
J. Fuero			101				80	80 80	
G. Lautini					682	35 to	50	253 70	
J. Dughi					400		45	180 00	
Labatte					1842	35 to	70	911 55	
Stone Bros.			75		493	45	95	293 10	1867
E. P. Bloomer		30	30			1.45	95	72 00	
Kelly		25				1 5/8		40 63	
W. W. Cornielli			12			1 1/8		13 50	
J. D. Goodsell			18	21		1.00	75	33 75	
A. G. Fabel			10	20		1 1/8	72 1/2	25 75	
Thomberry & S., reduced from 1.45 & .95		25	25			1 1/4	80	51 25	
H. Freund		5	25			1 5/8	1 1/8	36 25	
W. F. & C. P. Symond		30	30			1 1/2	1	75 00	
J. Levi			60			1		60 00	
W. S. Bunnell			30				90	27 00	
Efind & Bro		6		25		1.40	55	22 15	
S. Sharks				50			50	25 00	
A. Vincenzo				309			50	154 50	
G. Lester & Co., 82 Boxes					885	15 to	32 1/2	291 55	1868
Graham & Losee			3					4 25	
H. J. McKay			24				85	20 40	
Adams Bros.		3						6 65	
G. H. Brown			12			1 1/8		13 50	
Toole			20				80	16 00	
M. C. Lovell		15				1.35		20 25	
L. R. Fortuer			3					4 00	
	400	626	1747	818	4302			$4806 18	

1869 **Lbts.' Ex. 2.**—July 2/94.

Messrs. G. Wessels & Co., New York. *Ceres*, No. 8.

[seal.] To Isaac L. Maduro, Colon.

8,696	Bunches	Bananas, Firsts, @ 75c.....	$6522 00
4,699	"	" Seconds, @ 40c.....	1879 60
		E. & O. E.	$8401 60

1870 In settlement of the above, I have received from Captain O. J. Svensson, in Colombian Currency, and in a 30 dys' draft on Messrs. G. Wessels & Co., for $2,126, which, at the rate of 60% premium, as arranged with said Captain, is equal in Currency to..... 5000 00 3401 60

E. & O. E. $8401 60

Isaac L. Maduro.

1871 **Libts.' Exhibit No. 3.**—July 2, 1894.

Messrs. G. Wessels & Co.

To Isaac L. Maduro.

9095	Bunches	Bananas, Firsts.....@ 90c.		8185 50
3319	do	do Seconds.....@ 48c.		3993 12
834	do	do Thirds.....@ 30c.		250 20
				$12,428 82

1872 $12,428.82 @ 1.60 U. S. C.....7768 00
Plus Balance as per statement. 89 40

E. & O. E. $7857 40

In settlement of the above I have received the equivalent value in drafts @ 30 days sight on Messrs. G. Wessels & Co.

Isaac L. Maduro.

Libellants' Ex. 1.—July 12/94. 1873

"CERES" VOY. No. 8.

845 shipped O. K. on $195. } { Sales before arrival, all brokerage deducted.

	Bchs. 1sts	at	Bchs. 2ds	at	Bchs. 3ds	at	
E P. Bloomer, Zanesville....	30	1.20	30	.80			
P. Marzetti, Columbus.....	30	1.25	30	.85			Rejected. Turned over to H. T. Ungemant & got 36.56 less.
							1874
M. Carpenter, Buffalo.....			300	.90			
Motley & Co., Portland.....	150	1.50	200	.90	100	50c.	Rejected & sold for our a/c.
W. Casham, Port Huron....			250	.90			Shipped 200 at 60 cents; allowed $40. more.
F. O. Keeton, Elmira.....	60	1.50					Sent 60 @ 50 c.
A. D. Spangler & Co., East Saginaw	100	1.30	75	.85			$22.50
Borden & Drysdale, "	90	"	80	"			Allowances made " 21.50
Buck & Leighton, Bay City.			100	"			" 10.00
Perkins & Houghton, "			60	"			" 6.00
Logan & Carroll. "	10	"	50	"			" 6.50
							1875
A. Nardi & Son, Williamsport					60	50c.	
B. F. Ames, Roanoke.....	25	1.50					Billed at 1.00.
Palmer & Jones, Salamanca.			25	1.			
D. S. Dibble & Co., Richmond	30	1.45	30	.85c.			Not sent.
J. M. Clark, Massillion.....	100	"	25	"			Cancelled; too ripe
F. B. Lyon, Cuba.....	60	1.50					Not shipped. Too ripe.
Jennings & Watson, Danville			200	.90			Shipped assortment.
Weatherly & Twiddy, Eliz. City.....	10	1.50					Billed @ 1.00.
J. P. Kennedy, New Castle...	60	1.45					Too ripe, not shipped.
							1876
P. Bachman & Son, Wheeling	300	1.50					" cancelled.
Alf Rush, Detroit..			50	.85			Too ripe, not
Ayres & Reynolds, "	25	1.45	50	.85			shipped.
J. Cleghorn & Son, Toronto..	100	1.45	300	.90			
Wm. Navel, Buffalo.....					400	50c.	Reduced to 35c.
Evans & Turner, Columbus..	300	1.25					Too ripe, not shipped.
Dixon Bros., Hamilton.....			350	.90			do.

1877 **Libellants' Ex. 2.**—July 12/94.

"CERES" VOY. No. 9.

Sales ahead. All brokerages deducted.

			Bchs.	1sts	at	Bchs.	2ds	at	Bchs.	3ds	at
		E. P. Bloomer, Zanesville, O.		30	1.45		30	.95			
	Allowance $5.00.	G. W. Kelly, Burlington, Vt.		25	1⅝						
		Aug. Fabel, Stroudsbg.....					10	1⅛		20	72c.
		E. W. Boyd, Lynchbg.....					150	.90			
	Red. to 1.25 & 80	Thorberry & Skal, Mansfield.		25	1.45		25	.95			
1878	Too ripe, didn't ship.	G. F. Kenna, Dayton.....		60	1.35						
	All. 3.75.	H. Freund, Honesdale.....		5	1⅝		25	1.12½			
	Ship'd 15 @ 1.35. Too ripe for more.	M. C. Lovell, Hornellsville...		75	1.50						
		W. & C. P. Symonds, Malone		30	1.50		30	1.00			
	Didn't ship.	B. F. Ames, Roanoke.....		20	1.50		10	1.00			
		Buck & Leighton, Bay City, Mich.		25	1.15		75	.75			
	Allowance $17.50.	Perkins & Houghton,					175	.75			
	Shipped 69 only.	Logan & Carroll,					100	.75			
	Reduced to 79–75.	Marion Fruit Co., Marion....		40	1.20		60	.75			
	Cancelled, too ripe.	H. Cutter & Sons, Richmond.					100	.70			
		J. N. Price & Co., Lima.....					100	.75			
1879		Cardosi Bros..... "					60	.85			
		F. P. Holland, Newcastle....					25	.95			
	Too ripe, not ship'd.	M. Carpenter, Buffalo.....					350	.85			
		J. Levi & Co, Schnectady....					60	1.00			
	Billed @ 85c.	D. D. Long, Oswego.....					60	1.00			
	Too ripe, didn't go.	Lyon & Penwick, Cuba.....		60	1.50						
		W. Canham, Pt. Huron.....					400	.80			
	Billed at 90c.	H. S. Brownell, Wmsport....					30	1.00			
	Didn't ship, too ripe.	J. Cleghorn & Son, Toronto..		200	1.40		200	.90			
	Allowance 22.50 a/c ripe.	W. L. White, Edgston, Pa...								150	.65
1880	Billed at 50c.	L. H. Marks & Co., Petersburgh								50	.55
		J. T. Jackson & Co., Toledo..		150	1.40		200	.90			
		E. J. Hendrickson, Columbus, O.....		300	1.20						
		J. Dughi, Newark, N. J.....			About 3000 Bchs.						

Voyage No. 8.	Actual distance.	Actual work.	Hours used.	Should have done.	Hours should have used.	Hours lost.
Left Scotland Light		Saturday, March 26, 12 P. M.				
Arrived Colon	1952	Monday, April 4, 11 A. M.	203	25½ hours too long	177½	25½
Left "		" " " 4.20 P. M.		Monday, April 4, 4.20 P. M.		
Arrived Bocas	135	Tuesday, " 5, 5.11 A. M.	13	Tuesday, " 5, 5 A. M.	12 3/11	8/11
Left "		" " 5, 8.40 P. M.		" " 5, 8.40 P. M.		
Arrived Greytown	130	Wednesday, " 6, 11.30 A. M.	15	Wednesday, " 6, 8.30 A. M.	11 9/11	3 2/11
Left "		Thursday, " 7, 8.20 P. M.		Thursday, " 7, 5 P. M.	allowing same time to be as used.	
Arrived Colon	245	Friday, " 8, 8 " & laid idle until 5 A. M.	23⅝	Friday, " 8, 3 "	22 3/11	1 13/33 9

If had gotten back to Colon any time before dark Friday 8th so as to work that night steamer would have left Colon Saturday night, or even Sunday, & at 11 knots been here at latest to work early Monday instead of arriving Tuesday midnight & only working Wednesday.

Began loading Colon		Saturday, April 9, 8 A. M.				
Finished " "		Monday, " 11, A. M.				
Left Colon		Monday, " 11, 12.30 P. M.				
Arrived Scotland Lightship		Tuesday, " 19, 9.40 "	201	23½ hours too long	177½	
" Quarantine		" " " 11.45 "		Sunday 17th or Monday 18th daylight.		

Laid there until morning & discharged Wednesday April 20th. *Ceres* worked loading, in Colon, Saturday, April 9th, Sunday, 10th, & part of Monday the 11th, BUT couldn't get men enough Sunday to load, had only 2 gangs at best & for at least 4 hours were knocked off altogether.

1884 1883 1882 1881

1885 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS and CHARLES T. WESSELS

AGAINST

1886 The Steamer "CERES," her engines, &c., and the SYDSVENSKA ANGFARTYGS AKTIEBOLAGET.

To the HON. ADDISON BROWN, Judge of the U. S. District Court for the Southern District of New York:

I, ENOS N. TAFT, U. S. Commissioner, to whom it was referred by the Interlocutory Decree in this suit to take proof and ascertain the amount of the libellant's damages herein and report thereon, do hereby report that I have been attended by the counsel of the respective parties herein, and have taken the evidence offered by them respectively, all of which is herewith returned to the Court, and upon the said evidence and evidence given upon the trial of this suit, I find and report as follows:

1887

FIRST.—The case relates to voyages 8 and 9 under a time charter party of the steamer *Ceres* made by her owners to the libellant.

1888

The Court decided that on these voyages there was a breach of the following clause in the charter party: "The owners guarantee the steamer to make an average speed under steam of not less than (11) eleven knots per hour fruit or light laden in moderate weather and with good American coal."

In respect to the nature and object of this guarantee, the opinion of the Court states as follows: "Guaranty "of Speed. The charter on its face, and all the cir- "cumstances show that the original hire of the steamer

"had mainly in view the transportation of fruit cargo. 1889
"In this business a certain speed is essential and the
"knowledge of what is to be counted on is important.
"The guaranty was that the steamer should make an
"average speed under steam of not less than 11 knots
"per hour fruit or light laden in moderate weather and
"with 'good American coal,' and the guaranty must
"be construed with reference to the objects of the
"charter. The provision that it shall make an aver-
"age speed shows clearly that it was the practical result
"that was looked at, and not merely the ship's capac- 1890
"ity of attaining 11 knots an hour under the best pos-
"sible conditions. It was intended to be a continuing
"guaranty that the average speed of 11 knots should
"be accomplished under the conditions stated; not in-
"deed in spite of any faults of the charterers, but
"that in the absence of any faults or obstacles on their
"part the owners should maintain the ship in a state of
"efficiency to accomplish that average speed."

It was on this interpretation of the guaranty that the Court held the steamer and owners liable for a 1891
breach of it, and ordered this reference to compute the damages.

The only damage claimed on the argument before me of any considerable amount is for the injury to the bananas brought on these two voyages from Colon to New York.

In respect to these damages the claimants contend:

1st. That the libellants knew when the steamer went upon these voyages that she could not make the guaranteed speed, and therefore that the exposure of 1892
the bananas to the consequences of the less rate of speed, which the steamer actually made, was a fault on their part and that consequently the owners cannot be held for the resultant injury to the fruit.

2d. That damages for injury to the fruit arising from the breach of the guaranty cannot be considered as within the contemplation of the parties.

As to the first of these contentions, it appears that

the attitude constantly maintained by the owners was that they could and would perform the guaranty. Had they intended to take the ground that the libellants could not only rely upon the fulfillment of the guaranty, because it was impossible for them to perform it, they should have said so when entering upon these voyages. Instead of doing this, they held to the position of undertaking to fully perform the contract on their part, and they have ever since contended that there was no breach on their part, and that the fault was not theirs, that the steamer did not make the guaranteed speed.

Under these circumstances, now that the Court has held that the fault was theirs, they cannot, it seems to me, be heard to claim, as they in effect do, that the libellants should either have assumed that there would be a breach of the guaranty by the owners and withheld their bananas from the risk of it, or otherwise have taken the risk upon themselves of the damage in case such breach should occur.

I do not think that this contention on the part of the owners should be allowed to prevail.

The second contention may, perhaps, be regarded as a more serious one. On previous voyages under this charter the steamer had failed to make the guaranteed speed, but no injury to cargo appears to have resulted and no question as to such ground of damage had ever arisen. Nor does it appear that the owners had any knowledge or experience, even if the libellants had, such as would make it clearly a thing understood between the parties that such damages as are here claimed for injury to cargo would be the result of such a failure to make the guaranteed speed as occurred.

Nevertheless, on the other hand, the carriage of fruit from different fruit exporting ports was understood to be contemplated when the charter party was made, and the guaranty of speed seems naturally to have regard to such perishable cargoes and the necessary consequence of decay and loss from too great lapse of time. And hence it would seem that such damages, if any, in case

of failure of the steamer to make the guaranteed speed may fairly be regarded as within the objects of the guaranty and within the legal contemplation of the parties.

I have, moreover, grave doubts whether that question is an open one before me, in view of the interpretation put upon the guaranty by the above quoted extract from the opinion of the Court, which appears to be adverse to the views of the claimants, and hence, without further argument, I conclude that the second of the above contentions ought not to prevail before me, but should be left to such further consideration as the Court may see fit to give it on hearing further discussion of the matter.

SECOND.—DAMAGE TO THE FRUIT.

If the testimony of Mowbray and the libellants were to be regarded as entirely correct and certain the damages from injury to the cargoes of bananas on the voyages Nos. 8 and 9, caused by the delay in their delivery at New York beyond the time when, with the guaranteed speed, they should have been delivered there, would be as follows:

VOYAGE 8.

Delay in delivering the cargo at New York from Monday morning, April 18th, 1893, to Tuesday night, April 19th, 1893, at 11:45. This includes the delay on the trips from Colon to Bocas del Torra and Greytown and back to Colon, whereby there was delay in commencing to load at Colon, and the loss of time on the voyage from Colon to New York. Had there been no delay the bananas would have brought	$10,426.75
As it was, owing to the injury to the fruit caused by the delay, it could be made to bring only	4,802.14
Loss	$5,624.61

1901

Voyage 9

Like delay in delivering the bananas at New York from Saturday noon, May 14th, 1892, to Monday noon, May 16th, 1892. This includes delay in making trip from Colon to Greytown, and back to Colon, whereby commencing to load at Colon was delayed, and delay on the voyage from Colon to New York.

Had there been no delay the bananas would

1902 have brought $12,882 40

As it was, owing to the damage the fruit suffered from the delay, it could only be made to bring 7,703 99

Loss $5,178 41

I am entirely satisfied from the evidence that the best possible amounts were realized from the fruit in its damaged condition. But upon the whole evidence

1903 there appear to me to be elements of doubt and uncertainty affecting the condition, in which the fruit would have been, had there been no delay beyond the time which would have transpired had the guaranteed speed been accomplished and affecting the amount that would have been realized from the fruit in that case.

1st. There is a conflict of evidence as to the condition in which the fruit was when it was shipped.

2d. The distances required to be covered on these

1904 voyages as stated by Mowbray and arrived at by him from the chart of the Pacific Mail Company and computations made by him with the aid of Bowditch's tables on the basis of what he adopted as the proper course in making the voyages and not on the basis of the course actually taken, appear to admit of some correction favorable to the claimants from the courses and distances so far as shown in the log.

3d. The time that should have been occupied in proceeding from Colon to Bocas and Greytown and then

back to Colon and the time that was lost from delay on these trips after the bananas were ready for loading and before loading was commenced cannot probably be accepted with the precise exactness and fullness given by Mowbray on his basis of computation and without making any allowance for going in and out of harbors. 1905

4th. There are some entries in the log as to the weather that can be claimed to show some immoderate weather, which are entitled to some consideration as affecting the question of delay, and although I do not think they are such as to call for much allowance, still they may be entitled to some weight in the general result. 1906

5th. The discovery of the smell and signs of incipient decay and damage to the fruit came so close to the time when it is claimed the *Cevic* should have arrived at the dock at New York, that it is impossible not to feel that some of the loss claimed would have resulted even if there had been no breach of the guaranty. Thus on the 8th voyage, it is claimed that the *Cevic* should have been at the dock Monday morning and the smell indicating decay was discovered Monday afternoon, and the decay was rapid after that. 1907

And on the ninth voyage, it is claimed that the *Cevic* should have arrived at dock on Saturday, May 14th, 1898, at noon, and "the signs of unsoundness or ripening or decay" were noticed on Sunday, May 15th, at noon.

All these considerations apply with about equal force to both voyages. 1908

And altogether they appear to me to have sufficient weight, in a case where absolute certainty cannot by any possibility be had, to require a reduction of the above estimated amount of what the fruit would have brought had there been no delay, by 20 per cent.

1909 This will make the amount which the fruit on the eighth voyage would have brought had there been no delay $8,341.40
Deduct what it did bring 4,802.14
The balance I find to have been the loss 3,539.26 $3,539.26
And in like manner the fruit on the 9th voyage would have brought had there been no de-
1910 lay 10,305.72
Deduct what it did bring 7,703.99
The balance I find to have been the loss $2,601.73 $2,601.73

DAMAGE FROM LOSS OF TIME IN USE OF THE STEAMER ON OUTWARD VOYAGES.

There was claimed before me for this loss of time 52 hours. As already indicated, the
1911 evidence, while it establishes that there was a considerable loss of time on the outward voyages, cannot be regarded as fixing that loss with exactness. I think, however, that 40 hours is a fair allowance to be made in this regard, and for this I allow 170.00

COAL LEFT ON BOARD.

I also allow $315 for coal left on board, less $153.05, balance of hire for 1½ days, mak-
1912 ing 161.95

The aggregate of the above items of damage is 6,472.94
I allow interest thereon from Aug. 2d, 1892, the date of filing the libel 798.32

Making altogether $7,271.26

I accordingly report that I have ascertained the dam-

ages sustained by the libellants herein to be seven thou- 1913
sand two hundred and seventy-one and 26/100 dollars.

All of which is respectfully submitted.

Dated August 22d, 1894.

ENOS N. TAFT,
U. S. Commissioner.

[Endorsed:]—Commissioner's Report.—Filed Sept. 4, 1894.

1914

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS and CHARLES T. WESSELS

AGAINST

The Steamer "CERES," her Engines, &c., and the SYDSVENSKA ANGFARTYGS AKTIE-BOLAGET. 1915

The libellants above named except to the report of E. N. Taft, Esq., Commissioner, filed herein September 5th, 1894:

1st.—For that said Commissioner in his assessment of damages, did not allow the full sums of $5,624.61, libellants' damage on voyage 8, and $5,178.41, libellants' damages on voyage 9. 1916

2nd.—For that said Commissioner made an estimated deduction or allowance from said damages of twenty (20) per centum.

3rd.—For that the Commissioner only allowed for 40 hours loss of time of the *Ceres*, on the outward voyages, instead of fifty-two hours, as proven by libellants' testimony.

1917 4th.—For that the Commissioner did not allow the full interest upon the libellants' damages.

Dated September 6th, 1894.

WING, SHOUDY & PUTNAM,
Proctors for the Libellants.

[Endorsed:]—Libellants' Exceptions.—Filed Sept. 6, 1894.

1918 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS *et al.*

AGAINST

The Steamship "CERES."

} Exceptions to Commissioner's Report.

1919 The claimant excepts to the report of the Commissioner, dated August 22, 1894, and filed in the office of the Clerk of this Court, September 4, 1894, for the following reasons:

1st.—For that the Commissioner held that damages for loss and injury to the fruit, arising from a breach of the guaranty was within the contemplation of the parties as a natural and probable consequence of such breach, and awarded damages therefor.

1920 2d.—For that the Commissioner refused to hold that libellant's knowing or having reason to believe that the vessel would not attain the guaranteed speed under the circumstances of load and trim imposed upon her on the 8th voyage, did not assume the risk of damages or injury to the fruit arising from failure to attain such speed.

3d.—For that the Commissioner refused to hold that libellants knowing or having reason to believe that the vessel would not attain the guaranteed speed under the

circumstances of load and trim imposed upon her on 1921
the 9th voyage, did not assnme the risk of damage or injury to the fruit arising from failure to attain such speed.

4th.—For that the Commissioner refused to hold that the proper measure of damages for breach of the warranty was the difference between the charter value or hire of a vessel capable of making the guaranteed speed and of a vessel which would make only the speed actually attained on these voyages. 1922

5th.—For that the Commissioner did not award damages in accordance with the ordinary rule in cases of breach of warranty.

6th.—For that the Commissioner construed the said guaranty in effect as a warranty that the steamer could and would deliver fruit in New York from Colon in a sound condition, and as virtually an insurance against loss or damage to the fruit from deterioration arising from delay on the voyage. 1923

7th.—For that the Commissioner having found that the fruit was not shipped in condition to arrive in New York sound after a voyage of ordinary duration, nevertheless refused to limit libellant's recovery to one-half damages.

8th.—For that the Commissioner omitted specifically to find that the preponderance of evidence showed that the fruit had not been shipped in sound and proper 1924
condition for shipment.

9th.—For that the Commissioner allowed an excessive amount for damages to the said fruit on account of the deterioration and alleged loss of market.

10th.—For that the Commissioner allowed the sum of $170 for loss of time on outward voyages 8 and 9.

11th.—For that the Commissioner omitted to hold that the damages sustained on the 8th voyage were

1925 not waived by the subsequent payment of hire for the month of May, without reservation, and after the extent of such damages were ascertained and known.

Respectfully submitted,

CONVERS & KIRLIN,
Proctors for Claimant.

New York, September 8th, 1894.

[Endorsed :]—Claimant's Exceptions.—Filed Sept. 8th, 1894.

1926

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS

vs.

THE "CERES."

1927

EXCEPTIONS TO REPORT ON DAMAGES.

WING, SHROUDY & PUTNAM, for Libellant ;
CONVERS & KIRLIN, for Respondent.

BROWN, J.:

The evidence seems to me to show that the charter of the *Ceres* was made with such specific reference to the fruit trade, including the carriage of bananas, and
1928 that the guaranty of a speed of eleven knots, under the conditions stated, had such specific reference to the necessities of that trade within the knowledge of the agents of the owners who chartered her, and guaranteed that speed, as to make the vessel and her owners legally liable for the damages to the bananas through the delay caused by the failure of the steamer to make the guaranteed speed.

Under the conditions of the dispute which existed between the owners' representatives and the charterers as to speed, and the ability of the *Ceres* to comply

with the guaranty, I do not think the charterers were bound to throw up the charter or take the risk of the the voyage ; but that they might still look for the fulfilment of the guaranty which the owners' representatives contended they could fulfil. 1929

Taking into account, however, the elements of uncertainty referred to by the Commissioner, and the doubt that affects the condition of the cargo on shipment, as well as the market value of good fruit at this port, I shall allow a further deduction of five per cent. in addition to the twenty allowed by the Commissioner. With this modification the report is confirmed. 1930

Dated New York, October 20, 1894.

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the United States Court Rooms in the City of New York, on the 26th day of October, 1894. 1931

Present—Hon ADDISON BROWN, Judge.

GERHARD WESSELS and CHARLES T. WESSELS,

Libellants,

AGAINST 1932

The Steamship "CERES," her engines, &c., and the SYDSVENSKA ANGFARTYGS ARTIEBOLAGET,

Claimant and Respondent.

An interlocutory decree having been heretofore entered herein referring it to a Commissioner to ascertain the amount of the damages sustained by the libellants, and the Commissioner having filed his report, where-

1933 from it appears that said damages amount to $6,472.94, exclusive of interest, and the libellants and respondent having filed exceptions to said report, and said exceptions having been argued by the respective advocates, and the Court having made a deduction of five per cent. on said damages, amounting to $323.65, and with this modification said report having been confirmed, now on motion of Wing, Shoudy & Putnam, proctors for libellants, it is ordered, adjudged and decreed that the libellants above named recover herein
1934 against the steamship "*Ceres*," her engines, &c., and against the Sydsvenska Angfartygs Aktiebolaget, the respondent, the sum of $6,149.29, with interest thereon from August 2nd, 1892, $824, together with costs as taxed $346.75, making in all the sum of $7,320.04 and that said steamship be condemned therefor, and that the libellants have execution therefor against the respondents.

And it is further ordered that unless this decree be satisfied or proceedings thereon be stayed on appeal
1935 within the time and in the manner prescribed by the rules and practice of this Court, the stipulators for costs and value on behalf of the claimant and respondent herein cause the engagements of their stipulation to be performed or show cause why execution should not issue against their goods, chattels and credits to enforce satisfaction of this decree.

ADDISON BROWN.

[Endorsed :]—Final Decree.—Filed Oct. 26, 1894.

1936

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

GERHARD WESSELS and CHARLES T. WESSELS,

Libellants,

AGAINST

The Steamship "CERES," her engines, &c., and the SYDSVENSKA ANGFARTYGS AKSIEBOLAG,

Claimant and Respondent.

SIRS:

Please to take notice, that the claimant and respondent herein appeal to the United States Circuit Court of Appeals for the Second Circuit, from the final decree entered herein on the 26th day of October, 1894.

New York, November 3, 1894.

Yours, &c.,

CONVERS & KIELIN,

Proctors for Clmnt. and Respdt.

To Messrs. WING, SHOUDY & PUTNAM,

Proctors for Libellants.

SAMUEL H. LYMAN, Esq.,

Clerk.

[Endorsed:]—Notice of Appeal.—Filed Nov. 5, 1894.

1941 UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

GERHARD WESSELS and CHARLES T. WESSELS,

Libellants,

vs.

1942

The Steamship "CERES," her engines, etc., and the SYDSVENSKA ANGFARTYGS AKTIEBOLAG,

Claimant and Respondent.

The claimant assigns error to the final decision of the District Court herein, as follows:

FIRST.—For that the Court held that the speed
1943 guaranty in the charter was a continuing guaranty that the average speed of 11 knots should be accomplished under the conditions stated in the guaranty, and was not a guaranty of speed capacity merely.

SECOND.—For that the Court found that this speed was not maintained, and that the charterers never waived their objections on account of this alleged breach.

THIRD.—For that the Court found that on the last
1944 two voyages, the guaranty was not fulfilled, and that those voyages were made under the conditions stated in the guaranty.

FOURTH.—For that the Court found that the steamship was fruit or light laden on the last two voyages.

FIFTH.—For that the Court found that on the last two voyages, the weight of cargo in the steamship was less than the charterers were entitled to carry for a purely fruit cargo; whereas, there was no competent

evidence of the weight of cargo on board on either of 1945
those voyages.

SIXTH.—For that the Court omitted to find that "light laden" in the guaranty clause required that the vessel should be so laden and trimmed as not to have a deeper draught than with a properly laden and trimmed fruit cargo.

SEVENTH.—For that the Court omitted to find that the cargo was so improperly stowed by direction of the 1946
charterers, that the speed of the vessel was unfavorably affected by her trim, and that in consequence she was obliged to fill her two forward ballast tanks with water, thereby increasing the dead weight to be carried 180 or 200 tons of ballast, and that this brought the vessel to a draught below what it would have been fruit laden; and that on the two last voyages the vessel was accordingly not fruit or light laden, owing to the instructions of the charterers as regards the loading of the cargo.

1947

EIGHTH.—For that the Court held that the omission of the master to object to the loading and trim of the vessel on the last two voyages amounted to a waiver of any defense based upon the trim or ballast, or that by reason of ballast taken in to correct the improper stowage, the vessel was not light laden on these voyages, and that the owners are equitably estopped from setting it up now as a defense.

NINTH.—For that the Court considered the Lloyd's 1948
deep load line immaterial in the ascertainment of the ship's draught and of the draught at which the vessel should be deemed to be light laden.

TENTH.—For that the Court, against the claimant's objection, received in evidence a certain plan marked "Exhibit 84," without proof that it came from the claimant, or was delivered to the libellants by its authority, and intended as a representation of the vessel's draught and displacement, and overruled the

1949 objections made by the claimant to the introduction of the said document.

ELEVENTH.—For that the Court found that the omission to make the guaranteed speed was due to the imperfect condition of the boilers and pipes on the last voyages; whereas, there was no allegation of breach of charter in this respect.

TWELFTH.—For that the Court omitted to find that the libellants refused to allow the vessel time to go in
1950 dock previous to the last voyage and make needed repairs and to have the boilers and machinery overhauled, and were therefore equitably estopped to claim any damages on the last voyage which may have proceeded from trouble with the boilers or machinery.

THIRTEENTH.—For that the Court omitted to find that "eleven knots" in the guaranty clause should be construed to mean through the water and not over the ground.

1951

FOURTEENTH.—For that the Court omitted to find that the libellants waived strict performance of the speed guaranty so far as concerns the period for which the charter party was extended, which extended period covered the last two voyages.

FIFTEENTH.—For that the Court omitted to find that the *Ceres* had a capacity of 11 knots average speed, fruit or light laden, in moderate weather, with good American coal.

1952

SIXTEENTH.—For that the Court found there had been a breach of the speed guaranty, notwithstanding that libellants did not prove a breach of the guaranty under the conditions specified in it.

SEVENTEENTH.—For that the Court omitted to hold that if the steamer did not have a speed capacity of 11 knots under the conditions specified in the guaranty, the libellants by continuing to use the vessel under the charter, with knowledge of her want of guaranteed

speed capacity, waived any claim for damages arising 1953
therefrom.

EIGHTEENTH.—For that the Court omitted to find that the two last voyages from New York to Colon and from Colon to New York were not fruit or light laden voyages either way, on either voyage.

NINETEENTH.—For that the Court omitted to find that there was no breach of the undertaking to maintain the vessel in an efficient state in hull, machinery and boilers. 1954

TWENTIETH.—For that the Court omitted to find that there was no breach of Clause 21 of the charter party, providing that the steamer be provided with good awnings.

TWENTY-FIRST.—For that the Court refused to dismiss the libel, with costs.

TWENTY SECOND.—For that the Court omitted to hold that libellants knew when the steamship went upon 1955
both of the last voyages, that she could not make the guaranteed speed with the cargo and the trim imposed upon her by their direction, and, therefore, that the exposure of bananas to the consequences of the less rate of speed which the steamer actually made, was a fault on their part, and that the owners ought not be held for the resultant injury to the fruit.

TWENTY-THIRD.—For that the Court refused to hold that damages for injury to fruit arising from a breach 1956
of the speed guaranty cannot be considered as within the contemplation of the parties.

TWENTY-FOURTH.—In the alternative, that if the libellants are entitled to recovery in this case, their recovery should be limited to one-half damages.

TWENTY-FIFTH.—For that the Court omitted to sustain the exceptions and each of them filed by the claimant to the report of Mr. Commissioner Taft, dated August 22d, 1894.

1957 TWENTY-SIXTH.—For that the Court did not adopt the proper measure of damages, having allowed various items of loss specified in the Commissioner's report, which were not within the contemplation of the parties as a natural and probable consequence of a breach of the speed guaranty.

TWENTY-SEVENTH.—For that the Court omitted to hold that the proper measure of damages was the difference between the charter value of the steamer with
1958 the speed she was able to attain and the charter price or value that she would have had with a speed of 11 knots under the conditions stated in the guaranty.

CONVERS & KIRLIN,
Proctors for Claimant and Respondent.

[Endorsed :]—Assignments of Error.—Filed July 5th, 1895.

1959 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the United States Court Rooms, in the City of New York, on the 26th day of October, 1894.

Present—Hon. ADDISON BROWN, Judge.

SYDSVENSKA ANGFARTYGS AKTIEBOLAGET,
1960 Libellant,

AGAINST

GERHARD WESSELS and CHARLES T. WESSELS,
Respondents.

This cause having been heard on the pleadings and proofs of the respective parties, and having been ar-

gued by the respective advocates, now on motion of 1961
Wing, Shoudy & Putnam, proctors for the respondents, it is

Ordered, adjudged and decreed that the libel herein be and the same hereby is dismissed with costs, and that the respondents herein recover against the libellant the sum of $91.80 costsas taxed, and have execution therefor.

And it is further ordered that unless tnis decree be satisfied or proceedings thereon be stayed on appeal within the time and in the manner prescribed by the 1962
rules and practice of this Court, the stipulators for costs on behalf of the libellant herein cause the engagements of their stipulation to be performed or show cause why execution should not issue against their goods, chattels and credits to enforce satisfaction of this decree.

ADDISON BROWN.

[Endorsed:]—Final Decree.—Filed Oct. 26, 1894.

1963

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

SYDSVENSKA ANGFARTYGS AKTIEBOLAGET,
Libellant,

1964

AGAINST

GERHARD WESSELS and CHARLES T. WESSELS,
Respondents.

SIRS:

Please to take notice that the libellant herein appeals to the United States Circuit Court of Appeals

1965 for the Second Circuit, from the final decree entered herein on the 26th day of October, 1894.

New York, November 3, 1894.

Yours, &c.,

CONVERS & KIRLIN,
Proctors for Libellant.

To Messrs. WING, SHOUDY & PUTNAM,
Proctors for Respondents.

SAMUEL H. LYMAN, Esq.,
Clerk.

1966 [Endorsed :]—Notice of Appeal.—Filed Oct. 26, 1894.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

1967 SYDSVENSKA ANGFARTYGS AKTIEBOLAG,
Libellant,

vs.

GERHARD WESSELS *et al.*,
Respondents.

1968 The libellant assigns error to the final decision of the District Court herein, as follows :

FIRST.—For that the Court held that the charterers had the right to lay up the vessel for two weeks for overhauling, without pay, even though no overhauling was necessary.

SECOND.—For that the Court failed to find that at the time designated by the charterers to lay up the vessel for overhauling, overhauling was unnecessary.

THIRD.—For that the Court failed to find that two weeks' hire was due from the charterers by reason of

the fact that they gave notice to lay the steamer up for overhauling at a place where there were no proper facilities for overhauling. 1969

Fourth.—For that the Court failed to find that the respondents were liable by reason of having canceled the charter party and refused to employ the vessel farther, without giving the notice which the charter party required.

Fifth.—For that the Court failed to find that the respondents were liable by reason of expenses incurred and to be incurred by the libellant in replacing a portion of the bulkhead between No. 1 and No. 2 holds, removed at the respondents' request, and upon their promise to pay for the expense of replacing the same. 1970

Sixth.—For that the Court dismissed the libel, with costs.

Convers & Kirlin,
Proctors for Libellant.

[Endorsed:]—Assignment of Errors.—Filed Feb'y 12, 1895. 1971

1972

1973

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

GERHARD WESSELS *et al.*,
Libl'ts & Appellees,

vs.

The St. Ship "CERES," her engines, &c.,
OLAF J. SVENSSON,
1974 Cl'mt & Appellant,
and SYDVENSKA ANGFARTYGS AKTIEBOLAGET.

SYDVENSKA ANGFARTYGS AKTIEBOLAGET,
Libl't & Appellant,

vs.

GERHARD WESSELS *et al.*,
1975 Resp'dts & Appellees.

I, SAMUEL H. LYMAN, Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify, that the foregoing is a correct transcript of the record of the District Court in the above-entitled cause, made up pursuant to Rule No. 4 in Admiralty of the United States Circuit Court of Appeals, for the Second Circuit.

1976

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 30th day of March, in the year of our Lord one thousand eight hundred and ninety-five, and of the independence of the said United States the one hundred and nineteenth.

[SEAL.]

SAMUEL H. LYMAN,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS, 1977

FOR THE SECOND CIRCUIT.

GERHARD WESSELS *et al.*

v.

The Steamship "CERES."

SYDVENSKA ANGFARTYGS AKTIEBOLAGET (South Swedish Steamship Company)

v.

GERHARD WESSELS *et al.*

1978

Appeals from decrees of the District Court of the United States for the Southern District of New York, upon a libel and cross-libel.

1979

SHIPMAN, C. J.:

The libelants in the principal libel are importers of fruit in the City of New York, under the firm name of G. Wessels & Co., who, on May 25, 1891, entered into a charter party with the agents of a Swedish corporation which owned the steamship *Ceres*, for the hire of that ship, by a demise charter, for four months from the time

1980 of delivery, with the option of continuing the charter for the further period of twelve months, on giving thirty days' notice previous to the expiration of the first term, and with the further option of canceling the charter-party during the extended term upon like thirty days' notice. The charter was extended October 2, 1891. The charter-party declared that the vessel had 581 tons net register, and 720 tons dead weight capacity, exclusive of bunkers, which are of 100 tons capacity, and had about 63,300 feet clear cargo capacity exclusive of bunkers.

At the top of the printed charter-party were the words, "New York Fruit Form." It was a form used by New York fruit merchants, and contained the following clause: "The owners guarantee the steamer to make an average
1981 speed under steam of not less than (11) eleven knots ~~an~~ per hour. Fruit or light laden, in moderate weather, and with good American coal." Other clauses indicate that the saving of time was a point of importance, and that the transportation of bananas or other perishable property was in contemplation.

The 18th and 28th clauses are as follows:

"18. Ship's bottom to be kept properly cleaned and painted, and steamer to be docked whenever Captain and Charterers may think it necessary; but at least once in every four months. And payment of the hire to be suspended until she is again in proper state for the service."

"28. Steamer is to lay up for overhauling two weeks each year (in winter at time Charterers designate)."

1982 The steamer was delivered to Wessels & Co. on July 2, 1891, and thereafter made six voyages, which were completed December 4, 1891. She was then sublet to one Vanderbilt for three months, and made one voyage, when she went to Mobile, where Vanderbilt failed and gave up his sub-charter on January 14, 1892. On the same day Wessels & Co. notified the agent of the owners that they wished the steamer to "lay up for two weeks" * * * "without pay, from 17th January." Before the expiration of the two weeks, Wessels & Co. sub-let the vessel to a coal company, and she made two voyages which expired March 22. She thereafter made for Wessels & Co. two voyages (called in the record, voyages 8 and 9) to Colon

for bananas and other freight, and to return with the 1983
cargoes to New York. She returned on May 16. The first libel, which was filed August 2, 1892, was brought to recover from the ship compensation for the damages which the bananas sustained on these two voyages, by means of her inability to maintain the guaranteed speed.

The charter was canceled on May 21st, without giving the specified thirty days' notice, upon the ground that she was unable to comply with its conditions. The owners filed a cross-libel to recover $1,586, the amount of hire alleged to be due for the two weeks' "lay up" at Mobile, and for damages amounting to $244 for the cancellation of the charter without giving thirty days' notice. The District Court decreed upon the first libel, that the libelants recover $7,320.04, and dismissed the cross-libel. From 1984
each of these decrees the owner appealed.

The answer to the first libel, which was filed September 30, 1892, alleged the neglect of the charterers to supply the *Ceres* with good American coal, as the reason for her failure to make an average speed of eleven knots per hour, which failure, during most of the voyages, was admitted. After considerable testimony had been taken, the owner alleged by an amendment, filed October 10, 1893, that the failure was also due to the fact that the steamer was not fruit or light laden, and that the voyages were not made in moderate weather. The defense in regard to poor coal was practically abandoned during the trial in the District Court. These averments are to be read in connection with the construction which the claimant gives 1985
to the charter-party, and which is, that the guaranty of speed was a warranty that at the commencement of the charter the *Ceres* had a capacity of eleven knots under the conditions named, but not that she would continuously maintain it, and that the clause "fruit or light laden," means laden with fruit, as usually stowed, or with a light cargo, not including any cargo which exceeds in weight such a fruit cargo, and that under such a construction the *Ceres* was too heavily laden. During the last two voyages she was not entirely fruit laden, but had additional cargo.

Upon the construction of the warranty, the vessel was

1986 manifestly hired for the main purpose of carrying a very perishable cargo. The clause provides for her speed, not as it existed at the date of the charter, but as it would exist, provided, among other conditions, she was furnished with good American coal. The speed is also to be an average speed, and not one which she can occasionally make. The object of the provision was to guaranty an actual result during the voyages and not an ability to attain the result at the commencement of the term for which the vessel was hired. We agree with the conclusion of the district Judge that the warranty "was intended to be a continuing guaranty that the average speed of eleven knots should be accomplished under the conditions stated," in the absence of any faults of the charterers.

1987 The inharmonious testimony of experts, in regard to their definition of the term "light laden," proved that it had no settled meaning, but that its meaning is to be determined from the context or by the circumstances under which it is used. This being true, we agree with the district Judge that its meaning in the charter party is, "that the ship shall make eleven knots laden with a fruit cargo, or with its equivalent, *i.e.*, when as light laden as with a fruit cargo or one not more cumbersome, nor more unfavorable for speed." If expert testimony is important, this definition has the support of competent witnesses.

Upon the questions of fact which arose under the guaranty clause, the District Court found that an average speed of eleven knots was not maintained, that the char-

1988 terers never waived their objections on account of the defect, and further that "they complained of it from the first, and were constantly met by excuses, promises and hopes of improvement. During the last two voyages, which are the subjects of these suits, a speed of eleven knots was never attained, even for a day.

The only question on this subject, therefore, is whether the conditions of the guaranty were complied with, as respects the weather, cargo and coal; and whether the failure to make eleven knots is to be ascribed to any fault of the charterers in the loading and trim of the ship."

The Court further found that the *Ceres* did not transgress the conditions in regard to amount or weight of

cargo, but had less cargo than she was entitled to carry if 1989
entirely laden with fruit, and that she was not loaded too much by the stern.

Upon these questions of fact, the failure of the vessel to make the specified average speed, during most of the voyages, was admitted in the answer, and this admission was adhered to in the amendment. As the claimant probably foresaw, it lost nothing by making this admission, for the testimony as to the last two voyages enforced it.

In view of the inherent weakness in the testimony for the claimant, in regard to the alleged excessive amount of cargo and improper trim of the vessel, no addition to the comments which the district Judge made upon those two defences, is required. 1990

The district Judge referred the question of damages to a commissioner, whose careful investigation showed that a large part of the damage which the bananas sustained upon the last two voyages, was occasioned by the ship's inability to make the guaranteed speed. From the total loss resulting from the decay of the fruit, he deducted twenty per cent. as loss which would have resulted if there had been no breach. The district Judge added a further deduction of five per cent., and with this modification confirmed the report.

The claimant insists that the damages to the fruit should not be allowed, because they are too remote and because, before the last two voyages were attempted, the libelants knew that the speed required for the safety of the cargo 1991
was impracticable.

The important question in this part of the case is, whether the damages to the cargo can be regarded as the natural consequences of the breach of a contract which were within the contemplation of the parties, or whether the damages in the event of a breach, must be considered as confined to the increased consumption of coal, loss of time and that class of damage. If this guaranty had been contained in an ordinary charter party, by which the vessel was to be used for general purposes, the position of the owners would have been sound, and the guaranty would be construed to have reference to the value of the vessel

1992 to the charterers, in respect to economy of time, wages, supplies, hire and the like general particulars which are immediately connected with the ship itself. But the charter party bore upon its face that it was a form for a fruit charter. The owner, by its agent, and the charterers understood that the vessel was wanted for a particular use, and the warranty of speed had reference to the adaptedness or fitness of the vessel for that use. The charter party was entered into in view of the necessities of speed in the business in which the vessel was to engage, so that the damage to a perishable cargo, which directly occurred from a failure to make the requisite speed, must have naturally been in the minds and contemplation of the owner's agent when the contract was executed.

1993 The claimant's next point is that charterers cannot be allowed damages to cargo for a continued breach of the guaranty if they continuously ran the vessel with reasonably certain knowledge that she could not comply with the charter party, and that loss was the certain result, and, it is said that it was their duty to use reasonable exertions to make the injury as light as practicable and not persistently to allow the damages to be multiplied or increased. This proposition is true, but in this case, the agents of the owner desired that the charter should not be canceled. On November 4, 1891, the charterers notified the agents that the vessel would be returned because she was not up to the guaranteed speed. On the next day the agents promised to endeavor to remedy any faults

1994 that were not in accordance with the charter party, and requested a withdrawal of the notice of the preceding day, which request was complied with on November 6th.

On November 24, the charterers again notified the agents that they might throw up the vessel in consequence of her failure to make the required speed, and the agents requested that they would "allow the matter to stand until the vessel arrived." On December 18th the charterers informed the owner that from the assurances of the agent and captain they think that the speed will be improved. After the charter was canceled, the agents write, on May 23, 1892, that the ship is capable of performing the guarantee with proper coal. The continuance of the

use of the vessel was not a heedless act, but was at the ex- 1995
pressed desire of the agents and apparently upon their assurances of improved speed.

The cross-libel was for the recovery of the hire of the vessel for the half month during which she was laid up at Mobile, and for the loss of fifty pounds sterling by reason of the failure of the charterers to give thirty days' notice of cancellation.

The owner insists that whereas the 18th clause provides for a suspension of payment of the hire while the vessel is docked, the 28th clause does not provide for such suspension while the vessel is being overhauled. The charter-party required the owner to maintain the vessel in a thoroughly efficient state in hull and machinery, and also provided that she was to *lay up* two weeks in each year 1996
for overhauling, and at the time in the winter which the charterers should designate. We agree with the District Judge that the latter clause required an annual overhauling of two weeks, and for the convenience of the charterers they had a right to designate the time in winter when the lay up and overhauling should take place, and we further think that if the designation was not a subterfuge and a mere stratagem to evade the payment of hire, such payment was suspended during the lay up. We are not, however, of opinion that charterers can be permitted to escape payment as the reward of an unfair ~~and untruthful~~ artifice.

The vessel was sublet on November 30, 1891, to Vanderbilt for a period of about three months. He became in- 1997
solvent, and the vessel reached Mobile about January 5, 1892, with half the hire due on December 23d unpaid. The charterers instructed the captain not to leave Mobile until that amount and also the hire to be due on January 8th were paid. After litigation in Mobile, the hire was paid until January 24th, and on January 14th Vanderbilt surrendered the vessel, in Mobile, to the charterers, who, on the same day, notified the owner's agents in New York that they wished the *Ceres* to lay up for two weeks *from January 17, without pay.* The owner's agent asked permission to run the ship during that time and perhaps two

1998 weeks more, on its account, and were told that the charterers would be willing to make some such arrangement for four or six weeks. This proposed arrangement apparently fell through, because the owners protested against withholding the hire for the two weeks after the 17th. On January 23d, the charterers wrote the captain that they regret to lay him up, "but bananas won't pay to run at present, and we are doing same with *America*." On January 26th the charterers sublet the vessel to W. D. Munson, who took her on February 1st. The vessel had been docked in New York on December 6th at the charterer's request, when repairs were made at an expense of about $700 or $800. The charterers had no knowledge whether she needed repairing in January. This pretended lay
1999 up for overhauling was a subterfuge for the purpose of getting rid of payment of the hire of a vessel which had suddenly come back upon their hands, by shoving her over as suddenly upon the owner.

The claim of the owner that it was entitled to thirty days' notice of the cancellation of the charter-party, which was based upon and was authorized by a continued breach of one of the vital parts of the contract, is without adequate foundation.

The decree of the District Court, upon the libel of Wessels & Co., is affirmed without interest and without costs of this Court, with the exception that the decree of the District Court shall be without costs of that Court. The decree of the District Court, upon the cross libel of the
2000 owner, is reversed without costs of this Court, and the cause is remanded to that Court, with instructions to enter a decree in favor of the libellants for $1,586 and interest from January 17, 1892, without costs.

HARRINGTON PUTNAM,
For ~~Appellees~~. the Charterers

J. PARKER KIRLIN,
For ~~Appellants~~. the owner and Claimant

UNITED STATES CIRCUIT COURT OF APPEALS. 2001

SECOND CIRCUIT.

WESSELS *et al.*,
Appellees,

vs.

The Steamship "CERES,"
Appellant.

WALLACE, *Circuit Judge*, dissenting: 2002

I am of the opinion that the libelants ought not to recover as damages for the breach of warranty of the vessel's speed, the consequential loss arising by decay and depreciation of the cargo upon the two voyages in question, known as the eighth and ninth voyages. The theory of the libelants is, that if upon these two voyages, the vessel had maintained the contract speed from New York to Colon and back, she would have been able to deliver her cargo of bananas at New York two days earlier than the time when she was actually ready to make delivery, and that during the two days' delay the cargo decayed. By reason of the delay it has been found that there was a depreciation in the value of the cargo upon the first voyage of $5,624, and upon the second voyage of $5,178. According to the proofs of the libelant, if the vessel had maintained her contract speed throughout her first voyage, she would have arrived at Colon on Friday, April 8, at 3 o'clock P. M., would have been able immediately to receive cargo, could have sailed the next Saturday night, and could have reached New York and commenced to discharge on the morning of April 18th, at which time the fruit was in sound condition; but that by reason of her insufficient speed she did not reach Colon until 8 o'clock Saturday evening, April 9th; the next day, Sunday, the negro laborers refused to work, consequently she could not load and sail until Monday, April 11th, at noon, and 2003

2004 did not reach New York ready to discharge cargo until the morning of the 20th, at which time the fruit had decayed. Upon the second voyage, if the vessel had maintained her contract speed, she could have reached Colon Thursday, May 5, 1891, at 1.15 P. M., could have loaded and sailed by 9.30 P. M. Friday, and could have reached New York, May 14th, at 9.30 A. M., at which time her cargo was in sound condition, and could have been discharged that day; whereas she did not reach Colon until 8.30 P. M. of May 5th, arriving at that hour could not commence loading until Friday morning, could not complete loading and sail until 8 P. M. Saturday, and did not reach New York until May 16th at noon, at which time the cargo had decayed.

2005 The charter was for four months, with the option to the charterers to renew upon the same terms for a year longer, and contained a condition that they might cancel the contract at any time upon thirty days' notice. Its provisions indicated that the vessel might be employed in carrying fruit cargo, but the charterers were at liberty to employ her in any other kind of transportation at their pleasure between ports in Canada or the United States and the West Indies or Central or South America; and they were at liberty to sublet the vessel or assign the charter. The speed warranty was as follows: "The owners guarantee the steamer to make an average speed under steam of not less than eleven knots per hour, fruit or light laden, in moderate weather, and with good American coal." Before

2006 the charterers exercised their option to renew the charter, the vessel had been unable to make the contract speed. Her owners had insisted that the speed guarantee was inserted in the charter by their brokers without authority from them. Nevertheless, before and after the renewal, they had promised from time to time to endeavor to have the speed increased to conform with the warranty. After December, 1891, however, at which time some repairs were made to the vessel, nothing was done or attempted by her owners to increase her speed, and they insisted that they had done all they could and that the charterers had waived performance. Long before the voyages in question the charterers understood that the vessel was unable,

and was likely to continue unable, to make a higher speed 2007
than she actually made upon the two voyages in question. February 5, 1891, they wrote to the owners as follows: "We note that you consider that we have waived certain clauses of the *Ceres*' charter and that we shall not run her after March 1st; we do not know where you got this information, but it is entirely incorrect; we have waived no clauses of the charter and until you receive proper notice that we shall stop running her it is not your province to assume that we shall give her up at any time. * * * It is our present intention to continue running this boat, but we must again call to your attention that you have guaranteed her to make a certain speed, and that we insist that such guarantee shall be carried out. We have, 2008
from good feelings towards Captain Svensson, made no claim for damages, owing to non-fulfillment of this clause, as yet, but it will not be entirely safe to judge from this that we will do the same in the future. We have written to you several times on this subject, and do not propose to do so again." There is no pretense that from the time that letter was sent the libelants were under any expectation that the owners would endeavor to increase the speed of the vessel.

The libelants have been awarded damages for a loss which was not such a probable and necessary consequence of a breach of the warranty, as may fairly be supposed to have entered into the contemplation of the parties when the contract was made. Such a recovery is not sanctioned 2009
by authority Griffin *v.* Colver (16 N. Y., 489); Baldwin *v.* U. S. Telegraph Co. (45 N. Y., 744); Murdock *v.* Boston and Albany R. R. Co. (133 Mass., 15); Pennybacker *v.* Jones (106 Penn. St., 237); Howard *v.* Stillwell Company (139 U. S., 199).

If the present warranty had been contained in a charter for a single voyage between specified ports for the transportation of a fruit cargo, a loss caused by a decay of the fruit upon the voyage in consequence of the inability of the vessel to perform her contract, might properly be considered to fall within the established rule of damages. But the warranty was contained in a charter which

2010 was practically for sixteen months, and which authorized the charterers to engage in carrying any kind of cargo, and make a great variety of voyages. The contract was not that she should make the specified speed under all circumstances, but only that she should do so in moderate weather. The many voyages that might be made during the charter period were subject to contingencies which it was impossible to forecast. The conjectural character of the loss which was likely to occur in case of a breach of the warranty is illustrated by the one which actually took place. Because of five hours' delay upon the first voyage in arriving at Colon, the vessel has been made responsible for the consequences of the delay there of thirty-six hours, and the refusal of the laborers to work. If she
2011 had started a day earlier Sunday would not have intervened. A delay of thirty hours might not have resulted in the decay of the fruit. If the weather upon the voyage had been colder possibly the delay would not have materially injured the cargo; if it had been hotter possibly the loss would have been very much larger; and if the vessel had encountered heavy storms notwithstanding she had made her contract speed, her cargo might have been ruined by the delay. Whether a cargo of fruit would be injured upon any voyage by reason of the vessel's inability to make the contract speed would depend upon the condition of the fruit when shipped, the length of the voyage, the condition of the weather, and other circumstances which could not be anticipated.
2012 Whenever special or extraordinary damages, such as would not naturally or ordinarily follow a breach, have been awarded for the non-performance of contracts, it has been for the reason that the contracts have been made with reference to peculiar circumstances known to both parties, and the particular loss has been in the contemplation of both, at the time of making the contract, as a contingency that might follow the non-performance.

Aside from the objection that the damages which have been awarded are too remote and too speculative, there are graver objections to the recovery. The libelants having been aware that there was no probability that the vessel would be able to maintain the contract speed, had no

right to undertake to transport fruit cargoes upon long 2013
voyages, during which a few hours delay might entail an enormous loss by decay, with the expectation of shifting such loss upon the vessel owners. It was their right to refuse to keep the ship, and rely upon a legitimate claim for damages. Such damages would have consisted in a recovery of the cost of procuring a substituted vessel for the rest of the charter term, and for the difference in value during the prior period of the charter between a vessel such as the contract called for and such as they had received. The party injured by the breach of a contract can charge the delinquent with such damages only as with reasonable endeavors and expense he could not prevent; it is his duty to use reasonable diligence to reduce the damages arising from the breach as far as practicable. Wicker 2014
v. Hoppock (6 Wall., 94); Warren *v.* Stoddart, (105 U. S., 224); Bagley *v.* The Cleveland Rolling Mill Co. (22 Blatch., 342, 351); The *Oregon* (6 U. S. App., 581). Reason and good conscience will not permit him to claim damages which arise in consequence of his own inactivity, still less with such as arise from his own reckless and improvident conduct. Not content with the experiences of the first of the two voyages in question, the libelants undertook the second with the full knowledge of all the chances which might arise; and by the judgment of the majority of the Court this experiment has been sanctioned, and the heavy loss which has resulted from it has been shifted from those who undertook the hazards, with the full knowledge of the risks, upon the 2015
vessel owners.

I am also of the opinion that, in the absence of any provision in the charter to that effect, the hire was not to cease during the two weeks lay-up of the vessel; but as the Court has reached the conclusion upon other grounds that the appellant is entitled to recover the hire during that period, I do not care to enter upon a discussion of the question.

(Endorsed)—U. S. Cir. Ct. of Appeals, Second Circuit.—Wessels *et al.*, Appellees, *vs.* The Steamship *Ceres*, Appellant.—Wallace, Cir. Judge.—United States Circuit Court of Appeals, Second Circuit.—Filed March 17, 1896.—James C. Reed, Clerk.

2016 At a Stated Term of the United States Circuit Court of Appeals, for the Second Circuit, held in the Court Rooms in the City of New York, on the 4th day of April, 1896.

Present.—Honorable WILLIAM J. WALLACE,
Honorable E. HENRY LACOMBE,
Honorable NATHANIEL SHIPMAN,
Judges.

GERHARD WESSELS and CHARLES T. WESSELS,
Libelants-Appellees,

2017 AGAINST

The Steamship "CERES," her engines, &c., Sydvenska Angfartygs Aktiebolaget,
Claimant-Appellant.

This cause having come on to be heard on appeal from the decree herein of the District Court for the Southern District of New York, bearing date the 26th day of October, 1894; now, on motion of Wing, Shoudy & Putnam, proctors for the libelants and appellees, it is

Ordered, that said decree be and the same hereby is af-
2018 firmed, except that the costs included therein are disallowed, and without interest since the appeal and without costs of this Court, and that a mandate issue to said District Court directing said Court to proceed in accordance with the opinion of this Court.

E. H. L.,
N. S.

Sirs,—Please take notice that the foregoing order will be 2019
presented to this Court at the U. S. Court Rooms, in the City of New York, on April 20, 1896, at 10.30 A. M., for settlement.

Dated New York April 14, 1896.

WING, SHOUDY & PUTNAM,
Proctors for Appellees.

To Messrs. CONVERS & KIRLIN,
Proctors for Appellant.

(Endorsed)—Order of affirmance and notice of settlement.—United States Circuit Court of Appeals. Second Circuit.—Filed April 27, 1896.—James C. Reed, Clerk.

2020

At a Stated Term of the United States Circuit Court of Appeals, for the Second Circuit, held in the Court Rooms in the City of New York, on the 27th day of April, 1896.

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Judges.

SYDVENSKA ANGFARTYGS AKTIEBOLAGET,
Libelant-Appellant,

AGAINST

GERHARD WESSELS and CHARLES T. WESSELS,
Respondents-Appellees.

2021

This cause having come on to be heard on appeal from the decree herein of the District Court for the Southern District of New York, bearing date the 26th day of October, 1894;

Now, upon motion of Convers & Kirlin, proctors for the libelant and appellant, it is

2022 Ordered, that the said decree be and it hereby is reversed, without costs of this Court, and that a mandate issue to said District Court, remanding this cause to that Court, and directing the said Court to enter a decree in favor of the libelants for $1,382.39 and interest from January 17, 1892, without costs.

E. H. L.
N. S.

Sirs,—Please take notice that the foregoing order will be presented to this Court, at the United States Court Rooms, in the City of New York, on the 27th day of April, 1896, at 10.30 o'clock, A. M., or as soon thereafter as counsel can be heard, for settlement.

2023 Dated New York, April 18, 1896.

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Appellant.

To Messrs. WING, SHOUDY & PUTNAM,
Proctors for Appellees.

(Endorsed)—Order ~~of~~ for Mandate.—United States Circuit Court of Appeals, Second Circuit.—Filed April 27, 1896.—James C. Reed, Clerk.

2024

UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

I, JAMES C. REED, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered 1 to 510, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

Gerhard Wessels and Charles T. Wessels,
Libelants-Appellees,

against

The Steamship "Ceres" her engines, etc., Olaf J. Svensson, Claimant; and Sydsvenska Angfartygs Aktiebolaget,
Respondents-Appellants,

and in the case of

Sydsvenska Angfartygs Aktiebolaget,
Libelant-Appellant,

against

Gerhard Wessels and Charles T. Wessels,
Respondents-Appellees,

as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this first day of May in the year of our Lord one thousand eight hundred and ninety-six, and of the independence of the said United States the one hundred and twentieth.

James C. Reed,
Clerk.

Seal.

992 & 993

Office Supreme Court U. S.
FILED
MAY 4 1896
JAMES H. MCKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

GERHARD WESSELS *et al.*
Libellants-Appellees

vs

The Steamship "CERES," her Engines, &c., OLAF J. SVENSSON
Claimant-Appellant

SYDVENSKA ANGFARTYGS AKTIEBOLAGET
Libellant-Appellant

vs

GERHARD WESSELS *et al.*
Respondents-Appellees.

BRIEF FOR MESSRS. WESSELS ON MOTION OF THE "CERES" FOR CERTIORARI.

On behalf of Messrs. Gerhard Wessels and others, appellees in the case of the steamship *Ceres*, the following memorandum is submitted in opposition to the petition for *certiorari* on behalf of the owner of the steamship.

The only question raised by the petition is the amount of damages allowed by the District Court and affirmed by the Circuit Court of Appeals.

The breach of the essential guaranty of speed on behalf of the owner is scarcely contested.

The question which this Court is asked now to review is the proper measure of damages for breach of an express written guaranty to average not less than eleven knots speed "fruit or light laden."

The courts below have allowed as damages the actual decay and injury to the fruit carried, excluding all subsequent losses such as loss of market or other consequential damage.

This Court, therefore, is asked to review by its writ the points raised (1) whether the parties to an express guaranty of

speed "fruit or light laden" contemplated the carriage of fruit, and the decay of it as a result of a breach of their undertaking; (2) whether charterers had a right to rely, and did rely on this guaranty of speed; or (3) whether the fruit was damaged by this breach of guaranty.

I.—While ordinarily it may be difficult to determine just what damages are within the purview of the parties, the present case presents no doubt whatever that the contract contemplated the carriage of the identical fruit which was carried and damaged by the slow speed of the *Ceres*.

(*a*.) The whole tenor of the charter party from the caption to the signature shows that it contemplated the carriage of fruit.

1. It was called "N. Y. Fruit form" (fol. 1185).
2. It provided for the boilers carrying always their certified working pressure—a severe and difficult requirement only needed in the fruit trade.
3. The guaranty itself speaks of "fruit or light laden."
4. Clause 22 stipulates for a platform to hold tiers of fruit or a fruit deck.
5. Crew not to carry bananas. Donkey boilers not to be used for bananas (clause 23).
6. Provision for extra steam pipes to keep hold and between-decks heated (clause 30).
7. Messrs. Wessels had been many years in the fruit trade.

(*b*.) In the fruit trade speed is essential.

Mr. Hall, one of the agents of the *Ceres*, testified, when called on behalf of that vessel, that his firm originated the clause (fol. 994) and had made 20 or 30 charters with speed guarantees (fol. 993); that it was specially needed in the banana trade (fol. 992), and means that the "boat will have the required speed with a cargo of bananas or its equivalent weight" (fol. 995).

On cross-examination he said:

"Q. Is it a well-known fact that in the carriage of bananas speed and punctuality are very necessary? A. Very necessary.

Q. If they fail to do it, it leads to damage? A. Yes, sir; no question about it." (Fol. 999).

Such a speed guaranty in the fruit trade came before the District Court in the *Baracoa*, 44 F. R., 102.

As none of the officers of the shipowning corporation were ever called upon to testify, and as the very trade in which they chartered their ship had special exigencies requiring speed for carriage of the fruit, it was clearly right to find, as both courts have found, that the parties at the time of contracting together knew and contemplated that decay and over-ripening of the fruit carried would be a direct result of a breach of the guaranty to carry them at a speed of eleven knots.

The *Caledonia*, 157 U. S., 124, 139.

II.—Charterers clearly had a right to rely on their guaranty which had been specially inserted as an assurance that they were hiring a fit ship, unless the undertaking was waived by subsequent acts of the parties. Both courts have found that there was no such waiver.

A. There was hardly a week between the arrival of the *Ceres*, in August, 1891, and February, 1892, when the charterers did not address formal complaints to the shipowner, both directly and through its agents.

When the charterers did assume to reject the ship and sought to exercise the election which is now urged to have been their duty, they were met by an urgent and immediate request to withdraw from their position and to continue the employment of the ship on the agreement by the owner to remedy her defects.

Exhibit 10, p. 319.
" 12, p. 320.
" 13 and 14, p. 321.

Afterwards the charterers several times distinctly informed the shipowner that they should claim damages if the ship failed to comply with the contract requirements (fols. 1286, 1297, 1393).

What more could be done to rebut any possible inference of waiver?

B. Inasmuch as the master always insisted that he could bring the steamer up to her guaranteed speed, the charterers had a right to rely on his assurances. Indeed, they had no right to reject her on that ground until she had received a fair trial.

C. Before the voyages in question, the master claimed and reported that the vessel was making the guaranteed speed; and this information given to the charterers was an official authorization to them to rely on the future performance of the guaranty.

III.—The fact of this fruit damage, its nature and extent, was the subject of most careful and minute inquiry in the Courts below. Being essentially a matter of fact, we submit it on abundant proofs for the consideration of this Court, should it deem such assessment of damage a fit matter of review by this Court.

The voluminous record presented shows ample proof of weak, and patched boilers, deceptive log-books, and continued excuses offered for the poor performance of the steamer.

The dissenting opinion of one of the Circuit Judges really presents but a single point. Does a contract for 11 knots speed fruit-laden really mean *fruit laden;* and is it effective as the parties intended, so as to give the damages that must have been in contemplation, when the terms fruit-laden were inserted in the contract?

It is submitted that as this Court rarely reviewed matters of damage even under the former appeals, it would hardly find time for its graver and more solemn functions, if it were to issue the writ prayed for and remove by *certiorari* a cause in which the only questions were of the amount of damages—questions raised, as they are, on an express contract, clear and distinct in its terms.

Should the writ, however, be granted, then it is submitted that the whole controversy should be removed, and the writ directed also to bring up the cross-suit of the owner of the *Ceres* against Messrs. Wessels, the record of which is included in that submitted with this petition, because:

1. They are cross-actions, on the same contract, heard and decided together.

2. The cross-action is for two weeks' hire under the lay-up clause of the charter.

3. The District Court was reversed by the Circuit Court of Appeals, which held the hire was due.

4. The subject of the cross-suit is intimately connected with the action in chief, and the records are almost identical.

5. It would be manifestly unfair to the charterers to suspend their larger decree for damages during three years or more pending a hearing in the Supreme Court, and leave the vessel-owner (who stands as a debtor on the chief decree) to proceed and collect a cross-decree in its favor.

Respectfully submitted

HARRINGTON PUTNAM

Counsel.

Dated May 2, 1896.